1843

SUPREME COURT OF THE UNITED STATES.

No. 145.

AUGUSTUS HEMMENWAY, CLAIMANT OF THE SHIP "INDEPENDENCE," APPELLANT,

v.

WILLIAM B. FISHER, LIBELLANT.

APPEAL FROM THE CIRCUIT COURT UNITED STATES FOR MASSACHUSETTS.

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United States of America, Massachusetts District. May Term, 1855. In Admiralty.

At a Circuit Court of the United States for the First Circuit, begun and holden at Boston, within and for the District of Massachusetts, on Tuesday, the fifteenth day of May, in the year of our Lord one thousand eight hundred and fifty-five,

Before the Honorable Benjamin R. Curtis, Associate Justice, and the Honorable Peleg Sprague, District Judge,

WILLIAM B. FISHER, Libellant,
v.
The Ship "INDEPENDENCE," her CARGO, &c.
A. HEMENWAY, Claimant.

The transcript of the record of this libel (removed from the District Court), was filed in the clerk's office of this Court, on the sixteenth day of May, in the year of our Lord one thousand eight hundred and fifty-four, and is as follows, videlicet:

United States of America, Massachusetts District, *ss.*

At a special District Court of the United States, holden at Boston, within and for the District of Massachusetts, on Friday, the twelfth day of May, A. D. 1854,

Before the Honorable Peleg Sprague, Judge,

WILLIAM B. FISHER, Libellant,
v.
The Ship "INDEPENDENCE."

This libel was filed in Court on the 27th day of January, A. D. 1854, and is as follows, videlicet:

United States of America, District of Massachusetts, *ss.*

To the Honorable Peleg Sprague, Judge of the District Court of the United States, within and for the District of Massachusets.

The libel and complaint of William B. Fisher, of Cambridge, in the district aforesaid, master of the Steamship "City of Boston," for himself and the owners of the said steamship, and for the other officers and crew of said steamship, against the Ship "Independence," whereof Choate now is or late was master, her tackle, apparel, and furniture, and all and singular the goods, wares, and merchandise, now or late on board the said ship, in a cause of salvage, civil and maritime.

And therefore, the said William B. Fisher, for himself and the owners, and the other officers and crew of said steamship, does allege and articulately propound as follows:

First. That on Sunday, the first day of January, in the year 1854, at about eight o'clock in the morning, the said Steamship "City of Boston," then, and for a long time prior thereto, engaged in the freighting business between the ports of Boston and Philadelphia, arrived from said latter port at T wharf, so called, in said Boston, loaded with a valuable cargo on freight, consigned and belonging to divers individuals. That shortly after the arrival of said steamship, at about ten o'clock of the same morning, one Edward S. Tobey, a part owner of said steamship, came on board of her and inquired of your libellant if said steamship could go down to the Ship "Independence," then lying dismasted off Cape Cod, and bring her to Boston, and was informed by your libellant that she could be made ready with some preparation, which should be attended to at once.

Second. That said steamship, in addition to her cargo in the hold, had a very heavy deck load, which prevented a free passage fore and aft, and that it was necessary that so much of said deck load should be discharged as to allow such free passage, and that it was also necessary that said steamship should take in a supply of coal and wood and provisions, before proceeding to said ship. That as many extra hands as could work in discharging said deck load were immediately procured, and that it being Sunday, and the coal-yards closed, search was made for coal for said steamship, and some was found on Lincoln's wharf, so called, in said Boston. That in about two hours after the discharge had commenced, a sufficient quantity of said deck load having been discharged to admit of a free passage fore and aft of said steamship, she proceeded to said Lincoln's wharf, and there took on board coal, wood, and provisions, and made ready to start for said ship.

Third. That accordingly, at about two o'clock in the afternoon of the same day, the said steamship, having on board all of her said cargo except that portion of the deck load which was discharged as aforesaid, left said Lincoln's wharf, in said Boston, and proceeded with all possible despatch to said ship, and found her lying at anchor off Cape Cod. That when said steamship reached her, said ship had both anchors out and all her masts were gone, and her boats were, as your libellant was informed, stove in, and she was lying open to the sea in an extremely exposed and perilous situation, being about north-northwest from Highland Light, so called, and about twelve miles distant therefrom, and about north from Race Point, so called, and about seven miles distant therefrom.

Fourth. That said steamship having reached said ship, a pilot was put on board said ship from said steamship, by means of one of said steamship's boats. That they then commenced on board said *said* ship to make her ready to be towed by said steamship, and for that

purpose attempted to weigh her anchors, but the chains having previously got foul, some two or three hours elapsed before they could hoist up one of her anchors, and they slipped the chain of the other. After one anchor had thus been raised, and the chain of the other anchor slipped, the said steamship, which during this time had been worked off and on said ship, came up under the side of said ship, and while passing her bows, a line was thrown from said steamship to said ship, for the purpose of hauling the ship's hawser on board said steamship to make fast to her, but before said hawser could be drawn on board, said line was cut or broken, by getting foul with the propeller of said steamship. That the steamship then took a sweep round and came up under the side of said ship, and in passing her bows a line was again thrown from the steamship to the said ship, but without reaching her. That said steamship was thereupon backed down towards said ship, and as said steamship could not go alongside of said ship without danger of collision, it became necessary to send a line on board said ship by means of a boat, and that after some difficulty in getting men to man a boat, many of the crew refusing to go in the boat, in consequence of the roughness of the sea and the darkness, a boat was sent from said steamship to said ship with a line, and by means thereof the ship's hawser was drawn on board said steamship and made fast.

Fifth. That having thus made fast to said ship, it being then between eleven and twelve o'clock at night of the same day, the said steamship started with said ship and reached just below Boston Light, so called, at about five o'clock on the morning of the second day of said January. That in consequence of the lowness of the tide and the darkness, it was not considered safe to enter the harbor of Boston at that time, and said steamship was therefore obliged to lay off and on with said ship below said light, until about half past seven or eight o'clock of the same morning, when she proceeded to tow said ship into Boston harbor, to Lewis's wharf, so called, where she arrived, and said ship came to anchor off said wharf, shortly before noon of said second day of January, and being then in a place of safety, she was left by said steamship.

Sixth. That there was a very thick snow-storm on the morning of the said first day of January, and that it was snowing when your libellant was requested to go to the assistance of said ship as aforesaid, and for most of the time while said steamship was being made ready for that purpose, but that it had ceased to snow when said steamship had started from said Lincoln's wharf aforesaid. That the wind was light when she started from said wharf, but that there was a strong heavy head sea from the northeast, causing the steamship to plunge badly as she went out to the ship, and that after she started for the said ship the wind freshened, and when the steamship reached said ship, and while she remained there, and during the night, the wind blew strong, accompanied with squalls, and the weather looked threatening.

Seventh. That said ship had, within a few days previous to said Sunday, encountered a very severe gale, and had been obliged to come to anchor, and to cut away all her masts, and that her boats were stove, as this libellant was informed, and that at the time when said steamship reached her, she was lying disabled as aforesaid, in midwinter, in a very perilous situation, open to the sea, and exposed to the action of the wind and sea from every quarter, and that her situation was such, that she could only be relieved and saved by being towed by the aid of steam.

Eighth. That the value of said steamship is fifty thousand dollars, and that the value of said ship is estimated at forty thousand dollars, and of the cargo of said ship at about two hundred thousand dollars.

Ninth. That the said libellants, by reason of the services they performed in saving said Ship "Independence" and her cargo, deserve and are justly entitled to meet and competent salvage for such service, and to so much as has been and actually is allotted by this Court to persons doing and performing the like service, together with all charges and expenses attending the same.

Tenth. That all and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court; in verification whereof, if denied, the libellant craves leave to refer to the depositions and other proofs to be by them exhibited in this cause.

Wherefore the libellant prays, that process, in due form of law, according to the course of Courts of Admiralty, and of this Honorable Court in causes of admiralty and maritime jurisdiction, may issue against the said Ship "Independence," now in Boston, within this District, her tackle, apparel, and furniture, and against the cargo laden therein, wheresoever the same may be found, and that all persons having or pretending to have any right, title, or interest in said ship and cargo, may be cited to appear and answer all and singular the premises so articulately propounded; and that this Honorable Court would be pleased to decree such a sum of money, a proportion of the value of the said Ship "Independence" and her cargo, to be due to the libellants, as a compensation for their said salvage services, as shall seem meet and reasonable, together with their expenses in this behalf sustained, and to condemn said ship, her tackle, apparel, and furniture, and the cargo laden therein, and all persons intervening for their interests in the said ship and cargo, in costs, and otherwise right and justice to administer in the premises.

W. B. FISHER.

THAXTER AND BARTLETT,
Proctors for Libellants.

January 27th, 1854. Sworn to before me,

S. E. SPRAGUE,
Clerk.

Whereupon, by order of the Judge, a warrant and monition issued, commanding the Marshal to give notice to all persons concerned, that said libel had been filed, and that trial would be had thereon at a special District Court to be holden at the court-house in Boston, in said District of Massachusetts, on Friday, the tenth day of February, A. D. 1854, at ten o'clock A. M. And to give said notice by advertising the same in one of the public newspapers, printed at Boston, and by posting a copy of the same notice at the court-house in Boston, fourteen days at least before said day of trial. And also directing him to take the said Ship "Independence," and appurtenances, and said goods, wares, and merchandise into his custody.

And to make due return of his doings therein.

On which said Marshal made return as follows, viz.:

United States of America, Massachusetts District, *ss.*

BOSTON, January 28, 1854.

Pursuant hereunto I have given notice to all persons concerned, that the libel within named has been filed, and that trial will be had thereon, by publishing the substance of the within monition in the Boston Post, a newspaper printed in Boston, in said District, and by posting up a copy of the same notice in the court-house, in said Boston, fourteen days at least before the day within named for trial. And on the 27th day of January, 1854, I took the Ship "Independence," her tackle, apparel, and furniture, and all and singular the goods, wares, and merchandise on board thereof, into my custody, on this warrant, and on the same day, the said ship, appurtenances, and cargo were delivered by order of Court.

WATSON FREEMAN,
U. S. Marshal.

Then, on said 27th day of January, A. D. 1854, personally appeared A. Hemenway, of Boston, in the District of Massachusetts, and produced for surety Benjamin Bangs. And the said Hemenway and Bangs, submitting themselves to the jurisdiction of this Court, bound themselves, their heirs, executors, and administrators, jointly and severally, in the sum of five hundred dollars, unto the said libellant, that the said Hemenway should pay all costs and expenses which should be awarded against him in this suit, upon the final adjudication thereof, or by an interlocutory order.

And on said 27th day of January, A. D. 1854, the following claim was filed in court, videlicet:

United States District Court, District of Massachusetts.
In Admiralty.

FISHER et al.
v.
"INDEPENDENCE" and CARGO.

And now comes Augustus Hemenway, of Boston, merchant, intervening for his interest in said vessel and cargo, and alleges that he is the true and lawful owner thereof, and claims the same as his property.

A. HEMENWAY.

January 27th, 1854. Sworn to before me,
S. E. SPRAGUE,
Clerk.

And on said 27th day of January, A. D. 1854, the following agreement as to value and as to surety was filed in Court, videlicet:

United States District Court, District of Massachusetts.

FISHER et al.
v.
"INDEPENDENCE."

It is agreed that A. Hemenway and Benjamin Bangs may stipulate in said cause, in the sum of twenty-five thousand dollars, it being agreed that the value of said vessel was not less than thirty thousand dollars, and the cargo on board thereof was not less than one hundred and fifty thousand dollars, and that said vessel and cargo may be delivered from arrest upon such stipulation.

THAXTER & BARTLETT,
For Libellants.

Then, on said 27th day of January, A. D. 1854, personally appeared A. Hemenway, of Boston, in the District of Massachusetts, and produced for surety Benjamin Bangs. And the said Hemenway and Bangs, submitting themselves to the jurisdiction of this Court, bound themselves, their heirs, executors, and administrators, jointly and severally, in the sum of twenty-five thousand dollars, unto the said libellant, that the said Hemenway should abide by all orders and decrees, interlocutory or final, of the Court, and should pay the amount of the final decree of the Court, and all sums of money that he should be ordered to pay by the final decree of the Court, whether it be in this, or any appellate court.

Whereupon, by order of the Judge, a warrant to deliver issued, commanding the Marshal to cause said ship, appurtenances, and cargo to be delivered to the claimant aforesaid.

On which said Marshal made return, viz.:

BOSTON, Jan'y 27, 1854.

United States of America, Massachusetts District, *ss.*

Pursuant to the within precept, I have caused the within named Ship "Independence," appurtenances and cargo, to be delivered to the claimant within named, and have taken his receipt for the same as under.

F. WARREN,
Dep. Marshal.

January 27th, 1854. Received from W. Freeman, Marshal in and for the District of Massachusetts, the within named ship "Independence," appurtenances and cargo, in the same state as when seized and detained by his deputy.

A. HEMENWAY.

And on the 21st day of April, A. D. 1854, the following answer was filed in the Clerk's office, videlicet:

United States District Court, District of Massachusetts. In Admiralty.

The answer of Augustus Hemenway to the libel of William B. Fisher, master of the Steamship "City of Boston," for himself and the owners, and for the other officers and crew of said steamship, against the Ship "Independence," whereof George Choate is master, her tackle, apparel, and furniture, and all and singular the goods, wares, and merchandise on board the said ship, in a cause of salvage. And now comes Augustus Hemenway, of Boston, in said District, merchant, owner of the said ship "Independence," and for answer to the libel of said Fisher, against the said ship, doth allege and propound as follows:

First. That the said Augustus Hemenway is the true and bona fide owner of the said Ship "Independence," and that no other person is the owner thereof.

Second. That it is true that on Sunday, the 1st January, 1854, at about eight o'clock A.M., the said steamship "City of Boston," then, and for a long time prior thereto, engaged in the freighting business between Philadelphia and Boston, arrived at T wharf, in said Boston, loaded with cargo on freight, consigned to divers individuals, as set forth in the libel; but whether the cargo was valuable, or if so, of what value the same was, this respondent is ignorant, and prays that, if material, the libellant may be put to due proof thereof.

Third. That it is true that at about ten o'clock A.M. of the same day, Edward S. Tobey, a part owner of said steamship, went aboard of her, and inquired of the libellant if said steamship could go down

to the said Ship "Independence," then lying dismasted off Cape Cod, and bring her to Boston; but of what the said Tobey was informed by the libellant, this respondent is ignorant, and cannot answer.

Fourth. That this respondent has been informed and believes that the said steamship, in addition to her cargo in the hold, had a deck load, which prevented a free passage fore and aft; but whether the same was very heavy, this respondent has never been informed, and does not know, save from the libel aforesaid. That this respondent admits it to be true, that it was necessary that said steamship should take in a supply of coal and wood, before proceeding to said ship; but whether there was a necessity for a supply of provisions also, this respondent is ignorant, and has never been so informed, save by the libel.

Fifth. That it is true that as many extra hands as could work in discharging said deck load were procured, and that search was made for coal, and some was found at Lincoln's wharf in said Boston, but this respondent alleges that he caused said search to be made, and procured said coal by and through his own agent, Mr. Fowler.

Sixth. That it is true that at two o'clock, P.M. of the same day, the said steamer proceeded to said Lincoln's wharf, and took on board the needful wood and coal, and made ready to start for said ship.

Seventh. That it is true that said steamship, at about two-o'clock P.M. of the same day, having on board all her cargo, except that portion of the deck load which was discharged, left said Lincoln's wharf, and proceeded with all possible despatch to said ship, and found her lying at anchor off Cape Cod. That when said steamship reached her, said ship had both anchors out, and all her masts were gone. But this respondent denies that her boats were all stove in, as is wrongfully alleged in said libel, but on the contrary he alleges, that she had two boats, one long boat, and one a large yawl, twenty-two feet in length, in good order, and ready for use at any time.

Eighth. This respondent is informed, and believes it to be true, that at the time said steamship reached said ship, she was lying open to the sea; but he denies that she was in an extremely exposed and perilous situation, as wrongfully alleged in said libel; and, on the contrary, this respondent alleges that said ship was then, and had been since meridian of the preceding Friday, riding with her two largest anchors ahead in about fifteen fathoms of water, at ease and in safety, Highland Light bearing S. E. $\frac{1}{2}$ S. about eight miles distant, and Race Point bearing S. by W. about five miles distant, and that at no time after the meridian of Friday had the wind blown beyond a five-knot breeze, nor had the vessel dragged her anchors.

Ninth. This respondent further alleges that said ship sailed from Boston on Wednesday, the 28th day of December last; that during that night and the following day, the wind blew a violent gale,

increasing to a hurricane; and about 3 P.M. of Thursday, 29th day of December last, the master let go her larboard anchor, and cut away the foremast, being then in about ten fathoms of water; that the gale continued with great violence, and about 7 P.M. he let go the starboard anchor, and cut away the main and mizen mast; that, owing to the chains getting foul in the locker, he could let out but forty-five fathoms of one, and thirty-five of the other, by which, however, the vessel held without dragging. That at midnight of the 29th, the weather cleared, though the wind continued to blow with great violence, and with a heavy cross sea; but that at daylight of the 30th, the weather moderated, and at meridian of that day (Friday) it was fine weather, and the ship lay at anchor in safety. That said ship was provided with unusually large and heavy anchors and chains, and with chains of unusual length, to enable her to withstand the violent northers to which she would be exposed while lying in the open roadstead at Valparaiso, where she had previously been and was then destined, and through several of which she had ridden without dragging anchors, with all her masts and spars up; that one of said anchors weighed 3750, and one 3350 pounds. That her stern anchor weighed 1300, and her kedge anchor 700 pounds; that one of her chains was 120 fathoms and $1\frac{3}{4}$ inch in size, and the other was 105 fathoms and $1\frac{5}{8}$ inch in size; that her stream chain was 75 fathoms and $1\frac{1}{8}$ inch in size, and she had also an extra large new hawser of 8 inches in size, all which were in good order. That in the afternoon of Friday, the said master of the "Independence" spoke a schooner who offered assistance, which was declined, further than to send a letter by said schooner from the master of the "Independence" to this respondent.

Tenth. That for a part of Friday the crew of said ship were employed in clearing said ship's chains, so as to give them full scope, if needed, and in getting her stream and kedge anchor and stream chain and hawser on deck ready for use; and for the balance of Friday and Saturday, in clearing said ship's deck, and getting spars and rigging and sails in readiness to rig jury masts.

Eleventh. That on the evening of Saturday, about 7 P.M., the said steamship, on her way from Philadelphia to Boston, came alongside said ship, and the captain of said steamship went on board the "Independence" and offered to tow her to Boston, but he declined to name a price for the service; whereupon the master of the "Independence" refused to accept his offer to tow her up to Boston, but requested that he would report the ship on his arrival, to which he assented, and afterwards reported as follows at the news room in said Boston, that at 6 P.M. the afternoon before, he had "boarded the Ship 'Independence,' of Boston, three days from Boston, at anchor, Cape Cod Light bearing S. S. E.; all her spars were gone, but wanted no assistance."

Twelfth. That this respondent is informed and believes, that on

Sunday morning, about 9 A.M., a bark came alongside and tendered assistance to the said ship, which the said master declined also to receive. That from Friday noon, until the time she left her anchorage, there were sundry vessels in sight of the "Independence," from whom in case of necessity, she could have received aid. That the Steamer "Robert B. Forbes," from Edgartown, passed near and within sight of the anchorage of the "Independence," on Monday noon, towing a small vessel, and could with ease have brought the "Independence" to Boston, had she remained where she was. That the master of said "Independence" had prepared and made ready on Saturday to rig jury masts, and proceed to Boston or Provincetown with sail, if he thought it desirable.

Thirteenth. That during the whole time of the gale, and subsequently, said ship continued perfectly tight, stanch, and strong, and was uninjured in her hull, and her rudder and steering apparatus were in good order; and that from Friday noon, until she was towed by said steamship, she lay at her anchors with ease and safety, and without dragging. That from the time said steamship took her in tow till her arrival in Boston, the wind and sea were moderate, and not such as to cause any apprehension of danger.

Fourteenth. That it is true that said steamship having reached said ship, a pilot was put on board said ship by means of one of said steamship's boats, but this respondent alleges, that said pilot was employed by him and went down in said steamship as his agent, and at his expense, under the orders of Captain Baker, who was sent by this respondent in said steamer as agent for owners and underwriters, to advise and act with said Choate in the premises.

That after said pilot went aboard said ship, they began to make her ready to be towed by said steamship, and for that purpose commenced weighing anchors, but that owing to the chains having two turns in them, about two hours elapsed before they were able to hoist up one of the anchors, and that they then slipped the chain of the other.

That some time elapsed, and one or two unsuccessful attempts were made before they could get a line aboard said steamship from said ship, and it became necessary to send a line thereto by a boat; but this respondent alleges, that the difficulty, as he is informed, was not owing to the roughness or danger of the sea, but rather to the exceeding caution with which said steamship was managed and kept at a distance from said ship.

That this respondent is ignorant and has never been informed, save by the libel aforesaid, whether many of the crew of the steamship, or any of them, refused to go in said boat, on account of the roughness of the sea and darkness; but alleges, that if the same be true, there was no cause to apprehend danger at that time, either from the darkness or roughness of the sea; and he admits that a boat was subsequently sent by the steamship, by means whereof the hawser of said ship was drawn aboard said steamship and made fast.

That soon after, between eleven and twelve o'clock on Sunday night, the said steamship started for Boston with said ship in tow, she being attached thereto and towed by the hawser aforesaid, and that she reached just below Boston Light at about five in the morning of Monday the second of January aforesaid.

That in consequence of the lowness of the tide and darkness, it was as a matter of extreme caution determined to wait below the light until about 7½ A.M., but he denies that it would have been imprudent, had it been desirable, to have proceeded directly to Boston, and he admits that at about 7½ A.M. said steamship proceeded to tow said ship to Lewis's wharf in Boston harbor, where she arrived and came to anchor off said wharf at about 11 o'clock A.M. of that day.

Fifteenth. This respondent alleges, that the services rendered by said steamship were rendered on a contract made by said Tobey with this respondent and Francis Bacon, hereinafter named; that the said steamship should proceed to said ship for the purpose of towing her to Boston, and should be paid for the work, and labor, and time bestowed "a quantum meruit" compensation, which deprives the services rendered of the alleged character of salvage services, and reduces the claim to a meet and liberal compensation for the work and labor of towing said ship, and is a bar to a salvage claim set up in the libel aforesaid.

This respondent alleges, that on the morning of Sunday, the said Bacon, who is President of the China Mutual Insurance Company, said Company having insured a portion of said ship and cargo, applied to said Tobey, to hire said steamship to tow up said ship to Boston, and asked said Tobey, if she could go; who replied that he would ascertain if she was in a condition to go, and proceeded to the ship for that purpose, where this respondent and said Bacon and Charles Pearson met him, and were informed that said steamship was in a condition to go, but that he did not like to send her, although by her policies she had liberty to tow vessels, least by going she might vitiate the insurance on her cargo; whereupon the said Bacon, at the request of said Tobey, agreed, for his said company and others interested, to insure her cargo while engaged in said service. And the said Tobey having also expressed a doubt whether said steamship and owners might not be held responsible for the non-delivery of the cargo on Monday morning, this respondent personally agreed to hold them harmless and indemnified against all claim on that account, and said Tobey expressed himself satisfied with said agreements of said Bacon and this respondent, and consented that said steamer might go; and thereupon said Bacon applied to said Tobey to know what amount he should charge for this service, and said Tobey replied to said Bacon, "I cannot name the sum, for I don't know how long she will be out, nor what she may have to do." And the said Bacon rejoined, "Well, Mr. Tobey, on the return of the steamship,

you shall send us your bill, and if we think it is too much, the sum we are to pay, shall be left to disinterested parties," to which said Tobey answered, "Well, I agree to that."

That this respondent then wrote a note to Captain Choate, a copy of which is annexed, which after exhibiting to said Tobey, who read it, this respondent delivered to Captain Baker, who, was hired and sent by this respondent in said steamship as an agent for owners and insurers as aforesaid, to be by him handed to said Choate, which was done.

That said steamship encountered no bad weather or danger, from the time of her departure to tow said ship to her return here, and was not while on said service tried or injured in her hull, machinery, rigging, or otherwise.

That other steamships were in said Boston, fit and able for said service, and could have been procured, for a reasonable compensation for the work and labor of towing said ship, to have proceeded to her aid on said first day of January.

Sixteenth. This respondent admits that it is true, that early in the morning of the first of January, there had been a moderate fall of snow only, and that there was a very slight snowing until about ten A.M. of that day, and at intervals till about noon, but alleges that the weather was good and had moderated before said steamship started for said ship from said Lincoln's wharf, and that the wind was calm, and that there was a little swell from the northeast, but not a heavy head sea, as alleged in said libel, and he admits that the wind somewhat freshened after said steamship started for said ship, but he denies that while on her way there, or while there, or during the night, the wind blew strong, accompanied with squalls, or that there was threatening weather, and on the contrary he alleges, that the wind at no time, from the hour when said steamship left Lincoln's wharf, till she arrived off Lewis's wharf, did the wind blow heavily, or in such manner as to cause any apprehension of danger, and at no time was the weather such as to cause any anxiety.

Seventeenth. This respondent admits it to be true, that said ship, previous to said first of January, had encountered a severe gale and, been obliged to come to anchor, and had cut away her masts, as hereinbefore stated; but he denies that all her boats were stove, or that when said steamship reached her, she was lying disabled in mid-winter in a very perilous situation, exposed to the sea and wind from every quarter, or that her situation was such, that she could only be relieved and saved by being towed by the aid of steam, but on the contrary alleges, that she was then and had been for hours riding at anchor with entire safety, and at ease, and was able to ride out any gale however severe, and endure the action of any sea and winds, and with abundant means to rig jury masts and proceed herself to port, or to wait any time for assistance by steam or otherwise, as is hereinbefore more fully stated.

Eighteenth. This respondent does not admit that the said steamship is of the value of forty thousand dollars, and denies that the said Ship "Independence," with her masts cut away, was of the value of more than thirty thousand dollars, and avers that the cargo on board said ship was of the value of one hundred and fifty thousand dollars, insurance included, and that certain merchandise, shipped on board on freight, was of the value of seventeen thousand five hundred dollars.

That all and singular the premises are true; wherefore this repondent prays that this Honorable Court will pronounce against the demand of the libellant in his aforesaid libel mentioned and set forth with costs.

A. HEMENWAY.

(Copy.)

Dear Sir:

Captain Baker goes down in the "City of Boston" as agent for underwriters and myself, and you can do what you and he think best. Get the ship up here or into Provincetown as appears best, and get both anchors and chains if you can do so without much risk.

Yours,

A. HEMENWAY.

BOSTON, January 1st, 1854.

If the "Forbes" has got hold of you, it is all well.

Circuit Court, United States, Massachusetts District, April 21st, 1854. Sworn to, by said Hemenway before me,

H. W. FULLER.
Clerk.

And on the 12th day of May, A. D. 1854, the following application of libellant, that said cause be certified to the Circuit Court, was filed in Court, videlicet:

District Court, United States, Massachussetts District, March Term, 1854.

W. B. FISHER, Libellant,
v.
Ship "INDEPENDENCE" and Cargo.

And now the libellant shows the Court here, that in the above suit, his Honor, the District Judge of said Court, is related to or connected with the party libellant, or those whose interests the libellant represents.

Whereupon he prays the Judge, if, in his opinion, it is improper for him to sit in the trial of said cause, that the fact be entered of record, and the cause certified unto the next Circuit Court.

By S. BARTLETT,
Proctor for Libellant.

This libel was entered at a Special District Court, held on said twenty-seventh day of January, A. D. 1854, and thence was continued from time to time, until this twelfth day of May, A. D. 1854, and now, it is ordered by the Court, on application of the libellant, that the proceedings in this suit, together with an authenticated copy of this order, be certified to the next Circuit Court of this District, the Judge of this Court being so related to or connected with the libellant as to render it improper for him, in his opinion, to sit on the trial of this suit.

A true Copy of the Record.

Attest, WILLIAM S. DEXTER,
Clerk pro tem.

Clerk's fees in District Court, ...	$22 95
Marshal's fees, ...	10 56

Deposition of Wm. B. Fisher.

United States of America, District of Massachusetts, *ss.*

On the eleventh, twelfth, thirteenth, sixteenth, twentieth, and twenty-fourth days of October, A. D. 1854, before me Elias Merwin, a Commissioner duly appointed by the Circuit Court of the United States, for the District of Massachusetts, personally appeared, William B. Fisher, Enoch Willets, Wm. A. Penn, E. W. Randall, Richard Hennessey, John W. Shaw, Obed Baker, Gaines Sampson, John M. Field, Josiah S. Hatch, Wm. C. Fowler, Mathew Hunt, and Levi Taylor, K. W. Freeman, Simeon Nickerson, Alexander W. Freeman, Samuel Roberts, witnesses for the libellant in a certain civil cause of Admiralty and maritime jurisdiction, now pending in the Circuit Court of the United States, for the District of Massachusetts, wherein William B. Fisher is libellant, against the Ship "Independence," her tackle, apparel, and furniture and cargo.

October, A. D. 1854. And now, the said William Fisher having been by me first duly cautioned and sworn to testify the whole truth, did depose and say, in answer to interrogatories propounded by D. Thaxter, Esq., Proctor of the libellant, as follows:

Interrogatory First. What is your name, age, residence, and occupation, and how long have you followed the same?

Answer to Interrogatory First. My name is William Fisher, my age is sixty-three years; I reside in Dover, Massachusetts, and have followed the sea fifty years. I have been master about forty years.

Interrogatory Second. Whether or not you were on board of the steamer "City of Boston" on the first of January last, and went in her to the Ship "Independence;" if yea, in what capacity were you acting on board of said steamer; when did said steamer leave Boston and go to said ship, and from what wharf?

Answer to Interrogatory Second. I was Master of the Steamship "City of Boston" at that time, and went in her to the Ship "Independence" on the first of January last. The steamer left on the first of January about two o'clock in the afternoon from Lincoln's wharf.

Interrogatory Third. What preparation, if any, had been made on board of said steamer, to make her ready to go to said ship, and with what despatch was the same made, and what was the state of the weather while the steamer was getting ready?

Answer to Interrogatory Third. When I arrived here from Philadelphia, early that same morning, there was a thick snow storm. I was then very much lumbered with a very heavy and bulky deck load, and filled up with snow and ice all in amongst it. About one-half of my crew left the vessel and went up in town, and could not be found. I then mustered all the men I could find on the wharf, together with what were left of my own, and commenced taking off the deck load, and clearing the decks of snow and ice, which took from two to three hours. After the decks were sufficiently cleared, I then went to Mr. Lincoln's wharf, and coaled and wooded up and took in provisions, which took about till two o'clock in the afternoon, and by that time I was all ready for a start. This readiness that I got my boat into was on an order from my owner, Mr. Tobey. At the time that we commenced getting the vessel ready it was snowing, but it gradually cleared up.

Interrogatory Fourth. What was the condition of the weather, and of the sea in going to the "Independence?"

Answer to Interrogatory Fourth. When we first went out by Boston Light, the weather was pretty good, and the wind westward; a heavy sea was heading in from the east, which caused the steamer to pitch into pretty bad. About seven o'clock in the evening it began to breeze from the westward, and looked as if it was going to blow very heavy; I made the ship's lights, say about quarter before eight, nearly ahead. The vessel pitched so, that the water came clear over her bows sometimes; it was owing to the heavy sea that was heading in from the east.

Interrogatory Fifth. State when you reached the ship "Independence" where she was lying, in what condition you found her, and in what way, if at all, she was exposed to the sea and wind?

Answer to Interrogatory Fifth. It was about eight o'clock in the evening when I reached the ship. I found the ship lying on a bank called the Barron Bank—the said Bank lies north-northwest from the Highland Light, ten miles distant, and north-by-west five miles from Race Point. The depth of water, the least I ever found or heard of, is eleven fathoms. Between that and the Cape the water is much deeper. The ship was lying there at anchor at the time I arrived there. She was open in all directions to the wind and sea except from south-southwest.

Interrogatory Sixth. State all that was done from the time said steamer reached the "Independence" until the steamer took her in tow and reached Boston? State fully all that occurred, and give the state of the weather and of the sea?

Answer to Interrogatory Sixth. I hauled round her stern, stopped her steam, lowered a boat, sent the pilot of the ship on board. I had carried the pilot, Mr. Fowler, down. At that time the wind was blowing strong and there was a sharp ugly sea on. It was a pretty dark night; there was no moon; there were some stars out, but some flying clouds and a squally look; the stars were not out all the time. I told the pilot that I would play round the ship with the steamer until he got his anchors up. I played round the ship, as closely as I could with safety, for four hours. He then hailed me and told me that her anchors were up and that they were ready for me to come alongside. It was then about twelve o'clock, I believe. I then came up with the steamer on the larboard side of the ship, and shot ahead of her. When I was abreast of her I hove a small line to her, sufficient to haul their hauser aboard of the steamer. I then shot ahead of the ship. The line that I hove, got under the propeller and was cut off. I then went round her and came up under her stern on her larboard side again, hove the line, but did not succeed in reaching the ship with it. Shot ahead of the ship and backed down under her bows as near as I could; tried to heave the line several times on board of the ship, but could not reach her. I then lowered a life-boat, and had some considerable difficulty in getting men to go into her. They refused on account of the weather being so bad and the sea being so heavy and sharp; but after considerable persuasion I made out to get a crew to get into the boat. The steamer was then about one hundred feet from the ship. They took the end of the line and dropped under the ship's bows and got it on board of the ship. With that line we hauled the ship's hauser on board and made it fast. Then we commenced towing for Boston. At first we made very little progress with the ship on account of the wind blowing so hard, but it soon began to moderate, and we got more speed. We arrived up as near Boston Light as we wanted to go about five o'clock in the morning. We couldn't enter on account of there not being water enough for the ship. I then wound round with the ship to pass the time till the water rose, until about eight o'clock in the morning. We then put on all steam for Boston, and arrived about nine o'clock or between nine and ten. While we were playing around the ship before we got her in tow, the wind was blowing very hard and it looked very squally and threatening, so much so that we did not expect to do more than to get her in under the land somewhere.

Interrogatory Seventh. Whether or not was any and what pilot taken down to said steamer and put on board of said ship, and now was he put on board of said ship, and what was the state of the

wind, and sea, and weather, and how light or dark was it while the pilot was being conveyed on board of said ship, and what was the character of that service as to its being a safe or dangerous one?

Answer to Interrogatory Seventh. I have already answered as to putting said pilot on board and as to the weather. The boat went on board with the pilot tolerably well. It was somewhat dangerous to go in the boat in the night time; there was considerable distance to go and a heavy sea on. The boat was out of sight of me most all the time that she was gone.

Interrogatory Eighth. How long was it after said steamer reached said ship before she took hold of her, and what was the cause of the delay?

Answer to Interrogatory Eighth. It was about four hours after I reached her before I got hold of her. The cause of the delay was their attempting to get their anchors up. The chains were a-foul, and the pilot was determined to save at least one anchor, which he did. He slipped the other.

Interrogatory Ninth. When did said steamer start with the "Independence" for Boston, and where did she leave said ship?

Answer to Interrogatory Ninth. She started about twelve o'clock at night and left the ship at anchor about nine or ten o'clock in the morning, January 2, opposite Lincoln's wharf.

Interrogatory Tenth. How many hands did said steamer have on board in performing this service?

Answer to Interrogatory Tenth. I cannot tell the exact number. Our own crew, all told, including myself, was twenty-three. I think we had some extra if we had had our own crew.

Interrogatory Eleventh. Whether or not in your judgment said ship was in any and in what degree of danger in the position in which you found her, and why?

Answer to Interrogatory Eleventh. I do not think the ship was safe by any means in that place in that season of the year. She might have lain there pretty well in the month of July. She was exposed to the wind and sea, not only that but twice every twenty-four hours she would go clear around her anchors with the flood and ebb tide. By her going round her anchors she would drag these chains around and wind them up on the flues of her anchors, which would cause her drag them away in a gale of wind.

Interrogatory Twelfth. What was the tonnage of the Steamer "City of Boston," and what water did she draw?

Answer to Interrogatory Twelfth. Her tonnage is five hundred and eighty tons, to the best of my knowledge. She drew at that time about seventeen feet.

And in answer to cross-interrogatories propounded by William Dehon, Esq., Proctor of Respondents, the said deponent further saith:

First Cross-Interrogatory. Had you any interest as owner or part

owner in the Steamer "City of Boston" or her cargo, in January, 1854?

Answer to First Cross-Interrogatory. I had not.

Second Cross-Interrogatory. How long have you been in the employ of the owners of the Steamer "City of Boston?"

Answer to Second Cross-Interrogatory. Eight months; I am not now in their employ. I have given up going to sea.

Third Cross-Interrogatory. Was not the wind and weather more moderate at twelve o'clock on the night you took the "Independence" in tow, than it was when you first reached the ship?

Answer to Third Cross-Interrogatory. I do not think it was more moderate when we took the ship in tow than it was when we first reached her; but it was more moderate than it had been during that time. It still blew strong, but not so strong as it had blown while we were playing around the ship.

Fourth Cross-Interrogatory. How long a hawser was used to tow the Ship "Independence," and what length was it, and how was it made fast to the steamer?

Answer to Fourth Cross-Interrogatory. I never measured it, but I should judge it was eight or nine inches. We had the whole length nearly, which I think was a hundred and twenty fathoms. It was made fast aft—to the timber heads I believe. We towed her ahead —kept right ahead of the ship as near as we could.

Fifth Cross-Interrogatory. Did not the hawser used in towing belong to the "Independence?"

Answer to Fifth Cross-Interrogatory. It did.

Sixth Cross-Interrogatory. Did you on Saturday preceding the first of January, pass the "Independence," where she lay at anchor, and were you on board of her? If yea, at what hour?

Answer to Sixth Cross-Interrogatory. I boarded the Ship "Independence" between six and seven o'clock in the evening of December 31st. It was then dark, while she was lying at anchor.

Seventh Cross-Interrogatory. Did you at that time offer to take her in tow, and was not your offer declined by Captain Choate?

Answer to Seventh Cross-Interrogatory. I offered to take the ship in tow, and told the captain that I could tow him into Boston. The captain declined the offer, and the reason he gave was, because he had sent his young man to Boston in a fisherman with orders to get the "R. B. Forbes."

Eighth Cross-Interrogatory. Did not Captain Choate request you to report him on your arrival in Boston?

Answer to Eighth Cross-Interrogatory. He did.

Ninth Cross-Interrogatory. Did you make a report of him on your arrival to the news boat?

Answer to Ninth Cross-Interrogatory. On my arrival here, a newsman came on board, and I reported to him that I had boarded the Ship "Independence," and her situation.

Tenth Cross-Interrogatory. Did your clerk make a report under your direction, and is the paper marked "A. E. Merwin, Commissioner," the report he made?

Answer to Tenth Cross-Interrogatory. I don't recollect particularly about that. I have generally told him what to report; I should think the paper was Mr. Randall's handwriting, the clerk of the boat.

Eleventh Cross-Interrogatory. Had you any general instructions from your owners as to making bargains with vessels requiring your assistance?

The proctor for libellant objects to this interrogatory.

Answer to Eleventh Cross-Interrogatory. I had not at that time.

Twelfth Cross-Interrogatory. Had you not commenced discharging your deck load, before Mr. Tobey gave any order for getting the steamer ready to go to the ship?

Answer to Twelfth Cross-Interrogatory. I do not recollect as I had moved a thing. Mr. Tobey came down very shortly after Mr. Hemmenway, the owner of the "Independence."

Thirteenth Cross-Interrogatory. Did you not see Mr. Hemmenway and Mr. Bacon about going to the ship before Mr. Tobey came down?

Answer to Thirteenth Cross-Interrogatory. I had just shifted my clothes and was going to Cambridgeport, where I then lived, when Mr. Hemmenway came down in a carriage and told me to stop; that he had sent for Mr. Tobey, and he supposed that he would be there in a few minutes, and he supposed that I would have to go after the ship. Mr. Hemmenway and Mr. Bacon were both on the wharf at the time.

Fourteenth Cross-Interrogatory. Did you not at their suggestion tell the engineer to hold on to his steam?

Answer to Fourteenth Cross-Interrogatory. I do not recollect about that. I guess not. If I remember right, and I believe I do, the steam was all down then. The first thing we do when we get into the wharf is to let the steam down.

Fifteenth Cross-Interrogatory. At the time you left Lincoln's wharf, was there any wind whatever, and from what quarter?

Answer to Fifteenth Cross-Interrogatory. As I have stated before, there was a slight breeze from the westward.

Sixteenth Cross-Interrogatory. What is the distance from the place where the "Independence" was anchored to Boston Light, and how many hours were you in making it?

Answer to Sixteenth Cross-Interrogatory. The distance I should judge would be about thirty-five miles. We were between five and six hours from the time we started the ship, till we stopped outside of the light, about three or four miles from the light.

Seventeenth Cross-Interrogatory. Did you not start with the ship at twelve, and arrive within three or four miles of the light house before five A.M.?

Answer to Seventeenth Cross-Interrogatory. Five, or about five or a little after. I do not remember exactly.

Eighteenth Cross-Interrogatory. When deep loaded what is your usual rate of speed?

Answer to Eighteenth Cross-Interrogatory. I suppose about nine knots would be fair speed for her.

Nineteenth Cross-Interrogatory. In common weather do you generally make over eight knots, when deep loaded?

Answer to Nineteenth Cross-Interrogatory. Yes, I think I do. She generally makes about nine knots, and it never made any great difference, as I could see, whether she was going with the wind or against the wind.

Direct examination resumed.

First Direct interrogatory Resumed. State all that occurred from the time you first spoke the "Independence," on Saturday night, December 31st, till you left her?

Answer to First Interrogatory resumed. I spoke the Ship "Independence" between six and seven o'clock, on the evening of December 31st. She was then lying where I found her the next day. I hailed the ship and asked him if he wanted any assistance. He said he did, and I believe he asked what steamer that was. He then wished me to come on board. I told him that it was nighttime, and I did not like to leave my ship. I asked him to come on board of me; he said he could not, for his boats were stove. I then lowered away the boat; took a crew and went on board. As I passed up the ladder over the rail, I met the captain face to face. I asked him if he wanted any assistance to be towed into Boston; he says, walk into the cabin. He then commenced telling me his disaster. He told me he was overtaken with a gale in the bay, and brought him down to very short sail. He was in hopes he would weather Cape Cod, but he sounded in the height of the gale and found twenty fathoms of water. He then supposed himself close in with the back of Cape Cod. After other conversation in reference to that, it appeared that Captain Choate didn't want to say anything about getting his ship off before his crew. He asked me what power I had. I told him I had sufficient power to tow that ship to Boston. He then asked me what I should charge him for towing him to Boston. The answer that I gave to him was, that I had no authority to make a bargain, but that I would tow his ship and leave that part to be settled afterwards. He then told me, as I have stated before, that he had sent a young man off in a fisherman to Boston. I suppose that I remained on the ship three-quarters of an hour to an hour. The captain finally thought that as he had sent on for the "R. B. Forbes" he had better lay still and let me go on and report.

Second Direct Interrogatory resumed. Whether or not the captain

said anything, and what, about how soon he expected the "R. B. Forbes" would reach him?

Answer to Direct Interrogatory resumed. He told me that he expected that he would reach him by morning.

Third Direct Interrogatory resumed. What was the appearance of the crew, and why did you go into the cabin?

Answer to Direct Interrogatory resumed. The crew seemed to hover around to catch every word that we said, and the captain didn't wish to say anything till we got into the cabin.

Fourth Direct Interrogatory resumed. How long after the newsman came on board before Mr. Hemmenway came down as you have testified?

Answer to Fourth Direct Interrogatory resumed. I shouldn't think it was to exceed three-quarters of an hour.

W. B. FISHER.

Deposition of Enoch Willets.

October 11th, A. D. 1851. And now the said Enoch Willets having been by me first carefully examined, and cautioned, and sworn to testify the whole truth, did depose and say, in answer to the interrogatories propounded by D. Thaxter, Esq., proctor of libellant, as follows, viz:

Interrogatory First. What is your name, age, residence, and occupation, and how long have you followed the same?

Answer to Interrogatory First. My name is Enoch Willets; my age is thirty-eight years next January; I am a Delaware pilot, and have followed the seas nineteen years; I have been a pilot eighteen years; I reside in Philadelphia.

Interrogatory Second. Whether or not you were on board of the Steamer "City of Boston," on the first of January last, and went in her to the Ship "Independence?"

Answer to Interrogatory Second. I was, and went in her to the Ship "Independence."

Interrogatory Third. How long were you in going to the ship; what was the state of the weather and sea while going down to the ship? State fully.

Answer to Interrogatory Third. The wind was to the westward going down to the ship; the weather was cloudy; a heavy sea setting in from the eastward. We left Lincoln's wharf about two o'clock, and got down to the ship between seven and eight.

Interrogatory Fourth. State when you reached the Ship "Independence" where she was lying; in what condition you found her; and in what way, if at all, was she exposed to the sea and wind?

Answer to Interrogatory Fourth. She was lying on this bank when we reached her, some ten or twelve miles I should think from the lighthouse, and five or six miles from Race Point. She was ex-

posed to the wind and sea in all directions, except from south to southwest.

Interrogatory Fifth. State all that was done from the time said steamer reached the "Independence," until the steamer took her in tow and reached Boston. State fully all that occurred, and give the state of the weather and sea.

Answer to Interrogatory Fifth. When we first arrived to her, we sent a boat to her with a pilot on board. Then we played around the ship till the boat came aboard. Soon after we sent the boat aboard the "Independence," there came a snow-squall; it blew heavy; very dark, so dark that the Boston pilot-boat like to have run into us. The boat was some three-quarters of an hour getting from the ship to us; we could not see the boat, it was so dark, until the boat showed a light. The boat came aboard and we hoisted her up. We played around the ship until she got her anchors up. The weather during this time was cloudy, hazy weather, sometimes in squalls. Twelve o'clock, or about that, the ship showed us signal that she was ready. We then went up on the larboard side of the ship, hove a small line so that we could haul her hawser in. The line caught the propeller, wound it up till it became taut and parted. We then took a circle round the ship, came up on the larboard side, but did not succeed in reaching her with a line. We then went ahead of the ship, backed down to her as near as possible, lowered the boat, but had difficulty in getting men to go in her because there was so much sea and wind. Finally we got a crew to go and run a line to the ship; bent it on to the hawser, and run the hawser on board; hoisted up the boat, made the hawser fast and started ahead with the engine. When we first started we made very slow progress, on account of its blowing very hard ahead, and the sea. About five o'clock in the morning, I should think it was, we got up within three or four miles of Boston Light. The pilot said there wasn't water enough for the ship to go up. We then turned round and round, keeping our wheel lashed hard aport, till eight o'clock in the morning, when we came up Boston Harbor, and arrived here between nine and ten o'clock.

Interrogatory Sixth. Whether or not the weather was such while you were where the ship lay, that there was any, and what apprehension of not being able to tow the ship to Boston that night?

Answer to Interrogatory Sixth. It blew fresh all the while we were at the ship, but it blew harder at some times than at others; it was squally. Captain Fisher and myself made up our minds that we should have to take her to the Cape and anchor her, and that we could not tow her if it blew so hard.

Interrogatory Seventh. Whether or not any boat went from the steamer to the ship while lying there, and for what purposes; by whom was the boat manned; and what was the state of the wind, and sea, and weather, and how light or dark was it; and what was the character of that service as to its being a safe or dangerous one?

Answer to Interrogatory Seventh. A boat went from the steamer to the ship to put a pilot aboard and also to carry a note from a gentleman we had on board who was said to be the agent of the underwriters. At this time we put the steamer to the windward of the ship so that the boat would have no difficulty in going to her; the trouble was in coming back. Sometimes we were half a mile, sometimes a quarter of a mile, and sometimes close to the ship. When we got the boat aboard the first time we were half a mile from the ship, because it was very dark and we didn't know that she was coming, for we couldn't see her till she showed a light. The second time we had hard work to get a crew to go in the boat, because it was much rougher then and blowing much harder, but finally we succeeded, and run the small line aboard of her. It was a dangerous service.

Interrogatory Eighth. Whether or not was said ship in a position of any and what danger?

Answer to Interrogatory Eighth. I should think she was in danger. In an easterly gale she would go ashore on Cape Cod; if she started her anchors off this bank she would have forty odd fathoms of water between this and Cape Cod, and of course her anchors could not hold her in that water as they could in fourteen or fifteen fathoms. In a northwest gale, if she dragged, she would go to sea, and might fetch up on George's; but George's is a good way off.

Interrogatory Ninth. Whether or not there was any and what danger of a vessel in her position fouling her chains and anchors, and what would be the effect of it, and how were her chains?

Answer to Interrogatory Ninth. There was danger of fouling her anchors by swinging around. She was in tide's way, where she would swing around twice in every twelve hours. Fouling her anchors, if it blows at all fresh, will drag them. Her chains had two or three round turns in them, I don't know which. They were wound up so much that the captain told us the first night that we spoke him, that it would take him all night to get them clear, if he could get them clear at all. When the Boston pilot went aboard Sunday night, he sent back word that they were foul, so that he must slip, although he must get the other.

Interrogatory Tenth. State fully in regard to the weather and sea in going down to the "Independence," and how high the steamer's bows are, and describe the trim of the steamer, and why she is so trimmed?

Answer to Interrogatory Tenth. When we first left, the weather was moderate, wind to the westward; when we got out by Boston Light, there was a heavy easterly sea setting in; the wind was blowing fresher from the westward; the steamer pitched bows under; blew fresh from the westward all the way down, and the easterly sea still kept up. The trim four or five feet by the stern, so as to keep the

bows out and the propeller under water. Our steamer is fifteen to twenty feet from the water's edge to the top of the rail forward.

Interrogatory Eleventh. State the position of the ship, and whether you had seen her the night previous, and when did you first see her?

Answer to Interrogatory Eleventh. We made the ship about half past four o'clock, I should think, Saturday afternoon. The ship bore north-northeast of us. We set the ship so as to tell how to run for her after dark; we hailed the ship and asked him if he wanted any assistance; he said he did, and asked Capt. Fisher to come on board, and Capt. Fisher went on board. Cape Cod Light bore from us about south-southeast; Cape Cod Light and Highland Light are the same thing. The ship was about ten miles from the Highland Light and six miles I should think from Race Point, which bore I should think, about south-by-west, but I did not set it.

Interrogatory Twelfth. Whether or not could said ship have been towed from where she was to Boston without the aid of steam?

Answer to Interrogatory Twelfth. She could not have been until the wind came fair.

And in answer to Cross-Interrogatories propounded by William Dohon, Esq., proctor of the respondents, the said deponent further saith:

First Cross-Interrogatory. In what capacity were you serving on board the steamer, and for what length of time?

Answer to First Cross-Interrogatory. I was serving on her as Delaware pilot. I joined her the first of July previous. I am hired by the month. All steamers that sail from Philadelphia carry Delaware pilots, so as to have no detention in getting pilots or getting them taken off. This steamer leaves alternately each port once a week.

Second Cross-Interrogatory. Did you examine the ship's chains, or do you speak of their condition from what others told you?

Answer to Second Cross-Interrogatory. I speak from what the pilot sent word to us on board the steamboat.

Third Cross-Interrogatory. Were you aboard of the "Independence" at all?

Answer to Third Cross-Interrogatory. No, sir.

Direct Examination resumed.

First Direct Interrogatory resumed. Whether or not you do anything on board said steamship but pilot her in the Delaware; and is that your duty?

Answer to First Direct Interrogatory resumed. I have been chief mate; but my business then and now is only to pilot her in the Delaware. When the chief mate goes home a trip, I act as chief mate, and get his pay besides pay as pilot. This has happened three times since a year ago last July.

E. WILLETT.

Paper A.

Passenger by the Steamship "City of Boston," 70 hours from Philadelphia, December 31st, 1853, Mr. Augustus Coffin.

Freight List of the Steamship "City of Boston."

1333	bbls. flour, ...	Thomas D. Quincey.
100	" "	H. Schudder.
225	" rye, ...	Order.
100	" corn meal, ...	E. Williams.
50	" alcohol, ...	T. Simmons.
25	" "	Smith & Tarbell.
40	" Liquor, ...	Richardson & Hartshorn.
15	" and 5 casks ale, . .	Dennis & Gray.
5	casks tallow, ...	Mr. Jackson.
70	cases glassware, ...	Wilson, Fairbanks & Co.
63	" "	Mr. H. Davis.
31	" "	Wm. Underwood & Co.
22	" "	Eaton, Hill & Chandler.
222	half boxes window glass, . .	King, Dexter & Co.
41	rolls leather, ...	C. Porter.
40	" "	Caleb Stetson.
20	" "	S. R. Spaulding.
31	cases dry goods, ...	Read, Chadwick & Dexter.
18	bales "	C. O. Howe & Co.
30	cases candles, ...	E. H. Barker.
20	bbls. shellbarks, and	
13	bags beans, ...	Sprague, Soule & Co.

And one hundred other consignments.

At 11½ A.M., Nanset Light bearing west, distant three miles, took the Schooner "Lagrange," of Camden, Me., in tow. She was from Norfolk, bound to Rockport. 6 P.M. boarded the Ship "Independence," of Boston, 3 days from Boston, at anchor, Cape Cod Light bearing S. S. E. All her spars were gone, but wanted no assistance.

" A. E. MERWIN,
Commissioner.

Deposition of Edward W. Randall.

October 11th, A. D. 1854. And now, the said Edward W. Randall, having been by me first carefully examined, and cautioned and sworn to testify the whole truth, did depose and say, in answer to interrogatories propounded by D. Thaxter, Esq., Proctor of libellant.

Interrogatory First. What is your name, age, residence, and occupation, and how long have you followed the same, and in what capacities?

Answer to Interrogatory First. My name is Edward W. Randall; my age is twenty-seven years; I reside in Bath, Maine, and am now master of the Steam Propeller "Eastern State," running from Boston to Bath and Gardiner. I have followed the seas ten years and a half. I have been a mate of sailing-vessels four years; and was clerk of the Steamer City of Boston one year. The duty of the clerk was taking charge of the cargo, receiving and delivering it.

Interrogatory Second. Whether or not you went in the Steamer City of Boston to the Ship Independence, January 1st, 1854? if yea, please state what preparation was made in getting the steamer ready, and with what despatch was she made ready?

Answer to Interrogatory Second. I did go in her to said ship. We discharged the deck load, and took in more coal and more hands. All possible despatch was used in getting her ready.

Interrogatory Third. State what the state of the weather and sea was, while going to the Independence, and about what time you reached her?

Answer to Interrogatory Third. The weather was squally at the time; the weather was more pleasant when we left; but after we got by the Light, it grew more squally and blew heavier in squalls. The sea was a heavy swell from the eastward. The steamer pitched very heavy, she pitched her bows all under. I was standing on the house forward with Captain Fisher and Captain Baker, and the Pilot. We spoke of it. She was trimmed very much by the stern, and her bows were very light, the effect of which was to keep her bows out of water. This was done to keep her propeller under. If she had been trimmed as sailing ships usually are, she would have pitched her bows completely under.

Interrogatory Fourth. Whether or not you went on board of her, and if so, how, and for what purpose; and how did you find things aboard of her; and how long did you remain on board, and why did you leave her so soon?

Answer to Interrogatory Fourth. I did go on board of her to carry the pilot, and to arrange how we should take hold of her. I went aboard of her in a life-boat. I had charge of the boat, it was one of Francis's boats. When I first went aboard, I saw the Captain only; there were one or two men straying about deck. I was obliged to go on board on the weather side, which ordinarily is not the proper side, because her leeside was cluttered upwith her spars as they fell—perhaps it is better to say obstructed, because the leeside was completely buried up with spars and rigging. I first saw the Captain, and his inquiry first was what they thought of it up town; and as soon as he got through talking with the Pilot about that, I tried to get an arrangement with him, as my boat was filling. I could get nothing from the Captain, he left the arrangements to the Pilot. The Pilot seemed to take the entire charge. I then, after some talk with the Pilot, made my arrangements as to the signals, and how I should get the hawser on

board. I then made the arrangement to have a small line from the ship, and tried to get one. I went to the Captain, not seeing any other officer on deck,—the Captain sent me to the mate; I could not find him; finally found the second mate, and got him to get me a light, and go where the rigging was. I then got a pile of rigging out of the hatch myself, and put it in my boat, and I then tried to get a light from them, not being willing to go in the boat from the ship without one, it not being safe to go without one. After trying the second mate, I went to the Captain, and followed him into the cabin. I got the lantern out of the pantry,—the Captain remarked that that was all the light he had, and that was very dirty. I mention this because it seemed like everything else, neglected; everything seemed dirty and neglected about the ship. After I got my light, I tried to get my men into the boat, two of them had got from the boat into the ship. One of them said he was not going in that boat again at no rate; he was not going to risk himself in that boat again that night. They had liquor aboard of the ship; that made them worse to manage. I finally got them into the boat. I was on board of the ship twenty minutes, as near as I could estimate. I left so soon, because my boat was filling. She was lying alongside of the ship during the time. The bad sea caused the filling. She would pitch and pitch her bows in under, so as to ship the water forward. About five minutes after we went aboard of the ship, a pilot-boat luffed under the stern of the ship and spoke us.

Interrogatory Fifth. How was said ship lying as to her anchors, and how were her chains, and what, if anything, appeared to have been done in clearing the wreck?

Answer to Interrogatory Fifth. Her anchors were bending ahead; they had one turn in the chains. The ship had gone round her anchors and fouled her chains. Nothing at all appeared to have been done in clearing the wreck. Her foremast had been cut away and gone clear of the hull; the mainmast and mizzenmast had fell on the larboard quarter, and there lay with everything apparently belonging to them.

Interrogatory Sixth. Whether or not you had any trouble in getting any of your men to go back to the steamer, and if yea, what was the cause? How long were you in reaching the steamer? State fully the state of the wind and sea while in the boat, what was the degree of darkness? State all that occurred on the passage to and from the ship, and the character of the service, whether dangerous or otherwise.

Answer to Interrogatory Sixth. I have already answered the forepart of this question. We were from twenty minutes to half an hour in reaching the steamer as near as I could judge; it seemed longer because I felt so anxious. The wind was squally and blew heavy in squalls with snow; the sea was running high and broken; it was an irregular sea. It was so dark, that without lights we could

not have seen either vessel. I considered the service a very dangerous one.

Interrogatory Seventh. Whether or not it is more dangerous to board a ship on the weather than on the lee side?

Answer to Interrogatory Seventh. It is considered a great deal more dangerous to go on the weather side, because the sea washes against the ship. The lee side makes it smooth.

Interrogatory Eighth. How long was it before said steamer took hold of the ship, and what was the state of the wind and sea, and what was being done in the meanwhile, and in what way was the hawser got from the ship to the steamer?

Answer to Interrogatory Eighth. From the time we reached the ship it was from three and a half to four hours. The wind was squally, blowing heavy with snow-squalls, and the sea as I have described. The weather did not alter any till after we got hold of her. The steamer was playing around to keep herself near the ship, and to keep steerage way on the steamer. We first hove a line on board the ship; that line got foul, and we was obliged to cut it; then we run as near as we dare to, but finding it so dangerous, we did not go near enough for them to get the line; we then ran a little ways to windward of her, intending to send the small line in the boat to the ship, and I then went with others in the boat with the small line to the ship. I had charge of the boat.

Interrogatory Ninth. Whether or not you went in the boat to the ship a second time? State what kind of a boat was used; whether or not you had any and what trouble in getting any one to man the boat, and why, and what was the then state of the sea and wind, and what was the character of the service, whether dangerous or otherwise? State fully.

Answer to Interrogatory Ninth. As I have already stated, I went to the ship a second time in the boat with the line; it was the same boat. We had trouble in getting any one to man the boat, because they were all afraid to go in her, except one of the men who went with me before. There was a lull when we run that line; not so bad as it was before, and the distance was short; the sea was the same about as before, except that it was not breaking. It was lighter than it was before, although it was dark. It was somewhat dangerous, although not near so much so as before, on account of being shorter.

Interrogatory Tenth. After said steamship took hold of the ship, how long was she in getting to Boston, and what occurred this time, and what was the weather, when the steamship took hold of her?

Answer to Interrogatory Tenth. I have already given the state of the weather. We were between nine and ten the next forenoon getting up to the city.

Interrogatory Eleventh. Whether or not was said ship in a dangerous position where she lay, or how otherwise?

Answer to Interrogatory Eleventh. In my opinion she was.

Interrogatory Twelfth. Whether or not in going in the boat from the ship to the steamer the first time, did you at any time lose sight of the vessel?

Answer to Interrogatory Twelfth. I did.

And in answer to cross-interrogatories propounded by Wm. Dehon, Esq., proctor of respondents, the said deponent further saith.

First Cross-Interrogatory. Who went in the first boat with you to the Independence?

Answer to First Cross-Interrogatory. Josiah Hatch, and the other men, whose names I do not know, strangers hired in the city.

Second Cross-Interrogatory. Did you take any light with you from the steamer, and if not, why not?

Answer to Second Cross-Interrogatory. I did not, because the pilot was with me, and we were near enough to see the ship when we went, and it was not so dark.

Third Cross-Interrogatory. What was the distance of the ship from the steamer, when you started in the first boat?

Answer to Third Cross-Interrogatory. I should think about half a mile; I could not judge exactly.

Fourth Cross-Interrogatory. What was the distance when you went in the second boat, and who went with you?

Answer to Fourth Cross-Interrogatory. Not more than a quarter of a mile; it could not have been that. It was only about sixty fathoms. Josiah Hatch, and three other men whose names I don't know, went with me.

Fifth Cross-Interrogatory. How far could you see when you went in the first boat? Could you see the Independence?

Answer to Fifth Cross-Interrogatory. We could see the Independence when we started. I presume we could see a mile to distinguish a vessel.

Sixth Cross-Interrogatory. Was the wind blowing against the side of the Independence upon which you got aboard, and was the sea striking against it, and how strongly?

Answer to Sixth Cross-Interrogatory. The wind was blowing against the side we boarded, but not directly; it was at an angle. The sea was striking at an angle against the side, and so strongly, that it was not safe for a boat to lay there. She was filling alongside.

Seventh Cross-Interrogatory. Did you keep the boat on that side of the ship till you returned to the steamer?

Answer to Seventh Cross-Interrogatory. I did.

Eighth Cross-Interrogatory. Who was in her while she lay there?

Answer to Eighth Cross-Interrogatory. Josiah Hatch and one other man part of the time.

Ninth Cross-Interrogatory. Why did you not let the boat lay on the leeward side, where she would be protected from the wind and sea?

Answer to Ninth Cross-Interrogatory. Because the lee side was all lumbered up, and we could not get in from that side into the boat. I did not let her go round to the leeward side while lying there, because I did not want to wait any longer, than first to get the piece of rigging and get into the boat.

Tenth Cross-Interrogatory. If the wind blew as strong as you say it did, why did it not keep the "Independence" head to the wind as she lay at anchor?

Answer to Tenth Cross-Interrogatory. There was a current, I suppose, and the sea.

Eleventh Cross-Interrogatory. Do you mean to say she did not lie with her head to the wind?

Answer to Eleventh Cross-Interrogatory. No—she laid with the wind striking her on the starboard bow.

Twelfth Cross-Interrogatory. You say the foremast fell clear of the ship, why did you not get aboard abreast of the lee fore channels?

Answer to Twelfth Cross-Interrogatory. When we got near the ship the captain hailed us, and told us we could not get aboard to leeward, as she was so lumbered up.

Thirteenth Cross-Interrogatory. When you left the Independence the first time, did the steamer have a light up to guide you?

Answer to Thirteenth Cross-Interrogatory. Yes.

Fourteenth Cross-Interrogatory. Did she have any light up the second time?

Answer to Fourteenth Cross-Interrogatory. I presume she had lights up, but I don't remember noticing, for we had the line in the boat from the steamer.

Fifteenth Cross-Interrogatory. Did you examine the chains of the Independence, and see if they had one turn in them, or did you know it only by hearsay?

Answer to Fifteenth Cross-Interrogatory. I looked over the bows, but I cannot remember whether I saw a turn in them. The captain told us that there was.

Sixteenth Cross-Interrogatory. How long was it after taking the ship in tow before you reached Boston Light?

Answer to Sixteenth Cross-Interrogatory. We reached within four miles of Boston Light about six o'clock I should think, though I was not on duty at the time.

Seventeenth Cross-Interrogatory. Please to look at paper "A" and say if that is the report made by you to the newsboat on your arrival, Sunday morning, 1st January last, and state if it was made under directions from Captain Fisher.

Answer to Seventeenth Cross-Interrogatory. It was the report I made out, which is supposed to be near the amount of the cargo. I did not make it out to be exactly correct. There was no particular directions from Captain Fisher. He said nothing to me about it.

E. W. RANDALL.

Deposition of William A. Penn.

October 11th, A. D. 1854. And now the said William A. Penn, having been by me first carefully examined, and cautioned, and sworn to depose the whole truth, did depose and say, in answer to interrogatories propounded by D. Thaxter, Esq., proctor of the libellant, as follows, viz.:

Interrogatory First. What is your name, age, residence, and occupation, and how long have you followed the same?

Answer to Interrogatory First. My name is William A. Penn; my age is twenty-seven years; I reside in Philadelphia; am an engineer, and have been for the last six years.

Interrogatory Second. Whether or not you were on board of the Steamer "City of Boston" on the first of January last, and went in her to the Ship "Independence?" If yea, in what capacity were you acting on board of said steamer?

Answer to Interrogatory Second. I was on board of her when she went to the Ship "Independence;" I was acting as chief engineer.

Interrogatory Third. What was the condition of the weather and of the sea in going to the "Independence?" State fully, and its effect, if any, upon the engine, and whether or not there is any, and what risk or danger to the machinery in such a sea?

Answer to Interrogatory Third. The weather was blustering, and after we got outside of the light there was a heavy sea heaving in from the eastward. Driving a ship into a heavy sea of that kind she is apt to throw her wheel out; there is danger on all parts of the engine then; it is worse on the air-pumps. There was such a heavy sea on it that we could not drive the steamer very hard going out. To avoid a heavy head of sea, the captain generally heads her quartering to the sea, but here we had to run head on to it, in order to get on to the ship. I did not carry a very heavy head of steam, in order to avoid danger, but it was a good deal heavier than I should have done on a regular route, in order to get to the ship before dark.

Interrogatory Fourth. State when you reached the ship, how long it was after that before you took hold of the ship, and what you were doing in the meanwhile, and what the state of the weather and sea were during this time?

Answer to Interrogatory Fourth. It was about four hours, as near as I can judge, after we got to the ship before taking hold of her. I asked the captain how long it would be. He said he couldn't tell. I shut my draughts off and worked her around there with a low head of steam. There was a nasty swell on, as it seemed to me, in the engine room. I was not on deck much of the time. It was blowy, blustering weather.

Interrogatory Fifth. State how long it was after the steamer took hold of the ship before you reached Boston? how the steamer towed

her, and state all that occurred in towing the ship to Boston, and what head of steam you had on when you started with her?

Answer to Interrogatory Fifth. I judge we started with her about twelve o'clock at night and arrived with her in Boston about nine or ten o'clock the next morning. About twenty minutes before we got under weigh the captain told me that we would soon be ready, and give me time to get a good head of steam. We had taken hold of the ship and towed her rather slow at first, the wind blowed so heavy ahead. We had thirty pounds to the square inch when we started. We don't average over twenty pounds in running from here to Philadelphia.

Interrogatory Sixth. How much coal was taken on board said steamship before starting, and how much of the time from the time the steamer left Lincoln's wharf till she reached Boston with the ship, was the engine stopped?

Answer to Interrogatory Sixth. Twenty tons of coal were taken on board before starting, and used from twelve to fourteen tons, I judge. I don't think her engine was stopped an hour altogether.

Interrogatory Seventh. Whether or not did you have to get up steam before starting from Boston?

Answer to Interrogatory Seventh. I had to build new fires—the fires were all out.

And in answer to the following Cross-Interrogatories, propounded by Wm. Dehon, Esq., proctor for respondents, the said deponent further saith.

First Cross-Interrogatory. How long have you been employed on board the Steamer "City of Boston?"

Answer to First Cross-Interrogatory. One year last August.

Second Cross-Interrogatory. What head of steam did you carry, going out to the ship?

Answer to Second Cross-Interrogatory. From sixteen to eighteen pounds after we got out outside of the light,—from Boston to the light from twenty to twenty-three pounds. After getting outside of the light I found I could not drive the ship.

Third Cross-Interrogatory. What head did you carry while waiting to tow her?

Answer to Third Cross-Interrogatory. From twelve to fourteen pounds—as near twelve pounds as I could.

Fourth Cross-Interrogatory. What did you carry when you first took her in tow? how soon did you increase it, and to what amount?

Answer to Fourth Cross-Interrogatory. Thirty pounds when I first took her in tow. I did not increase it any more. I carried a heavy head of steam for three hours and then commenced reducing it.

Fifth Cross-Interrogatory. Do you mean to swear that you carried a head of thirty pounds during the whole three hours, from time of taking the ship in tow?

Answer to Fifth Cross-Interrogatory. No,—it varied from twenty-five to thirty pounds, but there was thirty pounds on when we first took hold of the ship.

Sixth Cross-Interrogatory. What head of steam did you carry from Boston Light up?

Answer to Sixth Cross-Interrogatory. From twenty to twenty-three pounds, according to my best recollections. We had a fair tide coming up.

Seventh Cross-Interrogatory. What is the heaviest head of steam you have carried running from Philadelphia to Boston?

Answer to Seventh Cross-Interrogatory. I have never averaged over twenty-five pounds. I never carried over twenty pounds. The certificate allowed me to carry thirty-six pounds, if I wanted to.

WILLIAM A. PENN.

Deposition of Josiah S. Hatch.

October 13th, A. D. 1854. And now, the said Josiah S. Hatch, having been by me first carefully examined, and cautioned, and sworn to testify the whole truth, did depose and say, in answer to Interrogatories propounded by D. Thaxter, Esq., proctor of the libellant, as follows:

Interrogatory First. What is your name, age, residence, and occupation, and how long have you followed the same?

Answer to Interrogatory First. My name is Josiah S. Hatch; my age is eighteen years, residence Falmouth, Mass., and am a seaman, and have been about five years.

Interrogatory Second. Whether or not you went down to the "Independence," in the Steamship "City of Boston," on the first of January last?

Answer to Interrogatory Second. I did.

Interrogatory Third. How was the pilot put on board the ship from the steamer, and who went in the boat?

Answer to Interrogatory Third. He was put aboard in one of Francis's Metallic Life Boats. I went for one, Mr. Randall, the mate, I don't know the names of the other three.

Interrogatory Fourth. State how long you were going to the ship, and how long you were in going from the ship to the steamer, and how the sea and weather was, and how dark it was?

Answer to Interrogatory Fourth. We were from ten to fifteen minutes in going to the ship, and twenty minutes to half an hour in returning to the steamer. Coming back it was so dark you couldn't see the ship only by the lights. Going we could see the ship from the steamer. Going there was considerable heavy sea on, and some wind, but not so much as coming back. Coming back we had some snow, and it blowed pretty fresh.

Interrogatory Fifth. How did the boat lie alongside the ship as to its being dry or wet in her?

Answer to Interrogatory Fifth. She nearly filled twice alongside of the ship. I stopped in the boat.

Interrogatory Sixth. Whether or not you went a second time from the steamer to the ship in the boat? if yea, for what purpose, and whether or not there was any and what difficulty in getting the boat manned, and why?

Answer to Interrogatory Sixth. I did go the second time, to carry a line from the boat to the ship to make fast the hawser. There was some difficulty in getting men to go in her; I don't know why, except that they didn't want to go. No one but Mr. Randall and myself went the second time of the first crew.

And in answer to cross-interrogatories propounded by Wm. Dehon, Esq., proctor of the respondents, the said deponent further saith.

First Cross-Interrogatory. Who was left in the boat with you as you lay alongside the ship the first time?

Answer to First Cross-Interrogatory. I don't know what the man's name was; one man.

Second Cross-Interrogatory. Were any of the men who went in the boat the first time, beside the mate and yourself, of the crew of the steamer, or were they strangers?

Answer to Second Cross-Interrogatory. There was but one of the crew of the steamer.

Third Cross-Interrogatory. What was the name of the other one of the crew who went with you?

Answer to Third Cross-Interrogatory. I don't know.

Fourth Cross-Interrogatory. If you thought it so dangerous in the boat, why did you not get aboard the ship?

Answer to Fourth Cross-Interrogatory. Somebody had to be in the boat. I might be there as well as anybody else.

JOSIAH S. HATCH.

Deposition of William C. Fowler.

October 12th, A. D. 1854. And now, the said William C. Fowler, having been by me first carefully examined and cautioned, and sworn to testify the whole truth, did depose and say, in answer to Interrogatories propounded by D. Thaxter, Esq., proctor for libellant, as follows:

Interrogatory First. What is your name, age, residence, and occupation, and how long have you followed the same?

Answer to Interrogatory First. My name is William C. Fowler, my age forty-one years, residence Boston, Mass., and I am a pilot, and have been nineteen years.

Interrogatory Second. Whether or not you went down to the Ship "Independence" in the Steamer "City of Boston," on the first of January last, to pilot her?

Answer to Interrogatory Second. I did go down in the steamer for the purpose of piloting.

Interrogatory Third. State what you know of the preparations made on board said steamer before going to said ship.

Answer to Interrogatory Third. I met Capt. Baker, who was in a carriage, and he said, you are just the man I want to see; Mr. Hemmenway, Mr. Tobey, and Mr. Bacon were down by the Steamer "City of Boston." I went to the steamer at the request of Capt. Baker. They were then taking off boxes and barrels from the deck load of the steamer. I should think this was about half past nine or ten o'clock in the morning. They took off part of her deck load. They went down to Lincoln's wharf and took in what coal they wanted. She had been lying at T wharf. I suppose this was done with all the despatch that could be.

Interrogatory Fourth. How much of her deck load was discharged, and why was it not all discharged?

Answer to Interrogatory Fourth. I have answered in regard to how much. I do not know why it was not all discharged. I suppose they had'nt time.

Interrogatory Fifth. With what despatch was said steamer made ready, and what directions, if any, did Mr. Hemmenway, the owner of the "Independence," give as to hurrying the preparations to get said steamer ready?

Answer to Interrogatory Fifth. Mr. Hemmenway took a very active part in getting the steamer ready; the same as anybody would if they were in a hurry to get a vessel away.

Interrogatory Sixth. What had the weather been that morning, and what was the state of the weather when they commenced discharging the deck load of the steamer?

Answer to Interrogatory Sixth. It had been snowing that night; it had stopped snowing that morning. The weather was hazy, thick, the wind, what there was, was to the northward.

Interrogatory Seventh. State when said steamer started for the Independence and when she reached her, and what was the state of the wind and sea while going to her, and what was the state of the weather when you reached her?

Answer to Interrogatory Seventh. We started from Lincoln's wharf about two o'clock; we reached the "Independence" from seven to half-past seven. A part of the way we had it moderate, very moderate; about three o'clock, when off the light, it was calm, that is, there was not wind enough to command a vessel; the weather was rather hazy at the time. There was a northeasterly sea rolling in, considerable of a roll, so that it made a head-beat sea for the steamer going out. After we got by the light, the wind breezed to the west, southwest for half an hour, and then it canted back to the west-northwest. When it breezed from the west-southwest it cleared the haze quite away. The wind then continued about west-northwest till we got there; it breezed; I should think that it was from a seven to eight knot breeze; the weather looked black and threaten-

ing, heavy clouds, very dark. The steamer pitched as any vessel would beating into a head-beat sea. I saw the water come over her bows two or three times; nothing unusual for a vessel to pitch her bows under in such a sea. I should think the boat was trimmed by the stern; her bow was pretty well up out of water. The weather was the same when we reached the ship, and from seven to an eight knot breeze and dark as I have described it. There was no moon; we could see the lights very distinctly. We made the ship's light about half an hour before we got to her.

Interrogatory Eighth. Whether or not you went on board of the "Independence;" if so, how? Where was she lying? In what state did you find her when you went on board? State what was done and by whom until the steamer took hold of her?

Answer to Interrogatory Eighth. I went aboard of the ship in the steamer's boat. I think there were four men in the boat besides myself. I think Race Point Light bore south half east, say eight to nine miles off; the Highland Light bore southeast-by-south half south, and about twelve or thirteen miles off. I never hove the line, but the captain told me that she was lying in seventeen fathoms water; that he threw his anchors in fifteen fathoms, but he dragged some and fetched up in seventeen fathoms. The wreck was completely lumbered up on the larboard side fore and aft. The masts fell on the larboard side, and I suppose they were in the same condition when I went aboard, as they were when they fell. I judge from appearances. I took a letter from Captain Baker and gave it to Captain Choate. I told Captain Choate the reason Captain Baker didn't come aboard was, that it was dark and rough and a small boat; and that whatever I did he would be satisfied with. I took charge of the ship. I ordered the mate to call all hands to man the windlass; all hands were called and did man the windlass, and hove in chain to the thirty fathom shackle; then unshackled and slipped the chain. There had been forty-five fathoms out. I then began heaving the other anchor, and hove it to the bow and lifted the anchor. Then the other chain that I had slipped had run down, and had a round turn round the chain of the other anchor, which I had hove up, and of course the vessel was not adrift. I then had to take a large rope, pass the turns around the windlass, passed it out of the hawse-pipe, and made it fast to the starboard chain. The starboard chain was the one I had brought up. Then I manned the windlass and hove taut, and took the whole strain, so that she rode by this rope. Then I unshackled the larboard chain from the larboard anchor, and cleared the starboard chain; then I shackled my larboard chain to my larboard anchor again; then I took a knife, cut the rope, and let the larboard chain go. The ship was then adrift, and I made a signal to the steamer, which was understood beforehand between us. When I first looked over the bow the chains were hanging straight up and down by the weight of the chain. When the starboard chain was let

go and run out of the hawse, it run down I suppose on to the other anchor or the bight of the other chain ; I cannot say as to that. The chains were foul ; there was a turn round when I hove up the larboard anchor. Whether there was a turn in the chains before this chain was slipped, I don't know.

The steamer then came down and hove us a line. I had passed from the ship into the steamer's boat a coil of two inch or two and a half manilla rope, the first time the boat came to the ship. When the steamer came along, she hove it ; we caught it and made it fast to the end of the hawser. They had so much slack over the stern, that it caught and parted, or had to be cut ; then the steamer started, took a turn, and came down on the ship's starboard bow. I hailed the steamer then and asked them if it wouldn't be better to send their boat alongside with that line, and they did so. They hauled the hawser then aboard and made fast. It was then by my time about one o'clock.

Interrogatory Ninth. What was done by the Captain of the "Independence" in getting the ship ready to start, and what was the state of his health ?

Answer to Interrogatory Ninth. The Captain was not very well ; he said he had cold and the rheumatism very bad. He would come up on deck occasionally and look. He did nothing in getting the ship ready. It is not customary for the master to have anything to say when the pilot is in charge.

Interrogatory Tenth. Whether or not he gave any directions in regard to getting in, or letting go the ship's anchors, and were his directions followed, and if not, why not ?

Answer to Interrogatory Tenth. When I first went on board I consulted Captain Choate as to the state of his anchors. He told me that it was doubtful whether I could get her anchors that night ; that if I undertook it, I would properly have to let them slip, and that I had better wait till morning. I told him I would try it, if the crew would assist me, and they went to work with a good will and took hold like men. The steamer was playing about then, and I thought the anchors might just as well be got in the night as in the morning, if it could be done.

Interrogatory Eleventh. In what way was the anchor weighed, and whether or not you requested any of the ship's crew to go over the bows to help clear the chains, and if yea, was said request complied with, and what was the character of that service as to danger, and whether or not the anchors could be cleared without it ? State fully, and how the anchors were cleared.

Answer to Interrogatory Eleventh. I have stated fully how the anchors were weighed and cleared. I did say, when we got the anchor up out of water, "Come, my lads, let us get over the bow and unshackle the chain, so as to clear the anchor. I didn't tell them to go. I heard one of the men growling that he wouldn't go.

I did not ask them after that. I got into the bowline myself; I held the lantern, and the second mate unshackled the chain. (I think if I had urged the thing, the men would have gone.) (The proctor for libellant objects to this clause, in brackets, as being incompetent.)

I went over the bow, and the second mate and I were in bowlines. We had to hang pretty low where we got our legs and arms some wet. She would drop us when she fell, into the water a little. I didn't consider it dangerous, or else I wouldn't have gone. The anchor could not have been cleared without my doing it.

Interrogatory Twelfth. What was the state of the weather and sea, while said ship was being made ready?

Answer to Interrogatory Twelfth. It was about the same as when we first arrived there. It looked threatening; heavy clouds; it looked as if the wind was coming heavy out of the northwest; it was dark, overcast, and no stars. The sea was about the same as when we arrived.

Interrogatory Thirteenth. Whether or not the state of the weather, wind, sea, and darkness, was such as to require any and what degree of skill and care in the management of the boat in going from the steamer to the ship? State fully the character of the weather for such service, whether good, bad, or otherwise.

Answer to Interrogatory Thirteenth. It did require skill to go from the steamer in the boat; it was dark, and did require skill to manage a boat. I shouldn't call it anything very dangerous. I do the same every week, often in worse weather, in our little twelve to thirteen foot canoe. I do not mean we have such weather every week. We do it often when we are called to do it. It wasn't good weather, or bad weather for such service.

Interrogatory Fourteenth. Whether or not are you acquainted with the Steamers "John Taylor" or the "Rescue?" Could they or not have performed the service performed by the "City of Boston," in towing said ship that night, and if not, why not? State fully.

Answer to Interrogatory Fourteenth. I am acquainted with the Steamers "John Taylor" and "Rescue." I don't think the "John Taylor" could have performed the service of towing said ship, because the boat is very low, and the water guards very low, and I don't think the Captain would have been willing to have gone out. She has power enough. The "Rescue," I believe, was hauled up, under repairs.

And in answer to Cross-Interrogatories propounded by William Dehon, Esq., proctor of respondent, the said deponent further saith.

First Cross-Interrogatory. Did not Captain Baker, on the 1st of January last, state to you that Mr. Hemmenway wanted you to go down to pilot up the "Independence?"

(The proctor for libellant objects to this Interrogatory.)

Answer to First Cross-Interrogatory. I met him, and Captain Baker told me that Mr. Hemmenway, Mr. Tobey, Mr. Bacon, and Mr. Pearson, were down alongside the "City of Boston," in reply to my question who were down there. He did not directly tell me that Mr. Hemmenway wanted to see me, more than any other.

Second Cross-Interrogatory. Under whose orders and directions did you act on the occasion?

Answer to Second Cross-Interrogatory. I acted under the direction of Captain Fisher. I was engaged first by Mr. Tobey to pilot the steamer. While I was on the steamer, I acted under Mr. Tobey's orders. I received orders both from Mr. Hemmenway and Mr. Tobey.

Third Cross-Interrogatory. Did not Mr. Hemmenway send you to get the coal for the steamer?

Answer to Third Cross-Interrogatory. He did,—that is, Mr. Hemmenway spoke to me about the coal, and so did Mr. Tobey, but Mr. Hemmenway seemed to take the lead.

Fourth Cross-Interrogatory. Look at the letter marked "B. E. Merwin, Commissioner," and say if that is the letter which was taken from the steamer to Captain Choate, and who delivered it?

Answer to Fourth Cross-Interrogatory. I should say it was the letter.

Fifth Cross-Interrogatory. Did not you engage Mr. Burroughs, to go down and pilot the steamer?

Answer to Fifth Cross-Interrogatory. I did not engage Mr. Burroughs, but he went of his own accord.

Sixth Cross-Interrogatory. Who did pilot the steamer up the night of January 1st?

Answer to Sixth Cross-Interrogatory. Mr. Burroughs.

Seventh Cross-Interrogatory. Is not the paper marked "C. E. Merwin, Comss'r, your bill of pilotage on the occasion referred to, and who paid it?

Answer to Seventh Cross-Interrogatory. It is, and Mr. Hemmenway paid it.

Eighth Cross-Interrogatory. Had the "Independence" more than two anchors and chains out when your reached her? Had she any other anchors and chains aboard ready for use, if needed?

Answer to Eighth Cross-Interrogatory. She had two anchors out; she had a spare anchor and a kedge on deck, and a stream anchor also.

Ninth Cross-interrogatory. Had she not extra size chains and anchors for a ship of her size, and extra length to her chains?

Answer to Ninth Cross-Interrogatory. I should say she had very heavy ground tackling. I know nothing about the length of her chains, more than what I was told.

Tenth Cross-interrogatory. While dismasted, as she then lay, with such ground tackle, might she not remain in safety till assistance could have been rendered?

(The libellant objects to this Interrogatory.)

Answer to Tenth Cross-Interrogatory. I think she could.

Eleventh Cross-Interrogatory. How long could she, in your opinion, have remained in safety, taking into view the fact that she had extra anchors and chains on deck?

Answer to Eleventh Cross-Interrogatory. I think with a clear hawse, she would have laid there all winter; that is, if she hadn't capsized her anchor, broke her anchor-stock, or fouled her chains. What I mean by a clear hawse, is having clear chains and clear anchors.

Twelfth Cross-Interrogatory. Could she have remained as she then was, from Sunday night till Monday noon, in perfect safety in the then state of the weather?

Answer to Twelfth Cross-Interrogatory. I think she could.

Direct Examination Resumed.

First Direct Interrogatory resumed. How did you know where to find the ship?

Answer to First Direct Interrogatory resumed. By Captain Fisher. He ran right for her.

Second Direct Interrogatory resumed. Whether or not Mr. Tobey pay you any pilotage?

Answer to Direct Interrogatory resumed. Mr. Tobey paid me the pilotage of the "City of Boston," and I paid it over to Mr. Burroughs.

WM. C. FOWLER.

Deposition of Gains Sampson.

October 13th, 1854. And now the said Gains Sampson, having been by me first carefully examined, and cautioned and sworn to testify the whole truth, did depose and say, in answer to interrogatories propounded by D. Thaxter, Esq., proctor of the libellant, as follows:

Interrogatory First. What is your name, age, residence, occupation, and how long have you followed the same?

Answer to Interrogatory First. My name is Gains Sampson; my age is thirty-six years; I reside in Duxbury, and am a mariner, and have been about twenty years.

Interrogatory Second. How long have you followed the seas, and in what capacity; and to what line of vessels are you now attached; and how long have you been running in that line; and to what vessel are you now attached?

Answer to Interrogatory Second. I have been before the mast, as officer, and master; six years and a half as master. I am now attached to Train's Liverpool Line of Packets, and have been four years and a half. I am now master of the John Eliot Thayer; she is about 1933 tons.

Interrogatory Third. Whether or not you have any and what acquaintance with the character of the water and shore off Cape Cod; and if yea, state what means of knowledge you have had; and state whether or not there is any shoal lying about north from Race Point, about seven miles distant; and state what depth of water there is between the shoal and the Cape; what depth of water there is on the shoal, and whether or not there is any current there?

Answer to Interrogatory Third. Being brought up in the Bay from the age of about fifteen, in small vessels and large ones, too, I have been in and out of Boston, and off the Cape a great many times. There is a shoal laying off north from Race Point, about seven miles, termed by the fishermen as the shoal-ground. The depth of water on the shoal is from twelve to fifteen fathoms; from that to the Cape you have from twenty-five to thirty fathoms; to the north and west of the bank, you have a soft bottom, and about thirty-five fathoms to the northwestward of it. I have been at anchor there several times, I cannot say how many times, and have caught fish there. Our bearing-point was to have Race Point about south-southwest, about eight miles, while we were lying in twelve to fifteen fathoms. There is no place between that and the shore where the water is as shallow.

Interrogatory Fifth. Suppose the Ship Independence, of about 850 tons burthen, having on board the following ground tackle, namely, one anchor, weighing 3750 pounds, and one weighing 3350 pounds, a stream anchor weighing 1300 pounds, and a kedge anchor weighing 700 pounds, one $1\frac{3}{4}$ inch chain, 120 fathoms long, one $1\frac{5}{8}$ inch chain 105 fathoms long, and $1\frac{1}{8}$ inch stream chain 75 fathoms long, and also having a large new hawser, eight inches in size, should meet with a gale, and should first let go her larboard anchor in ten or fifteen fathoms of water, and cut away her foremast, and should afterwards, the gale continuing, let go her starboard anchor, and cut away her main and mizzen-mast, and should bring up in ten or fifteen fathoms of water in a position where Race Point bore about south, and was about eight miles distant, and Highland Light bore south-east-by-south, $\frac{1}{2}$ south, and about twelve miles distant, and suppose her to be thus riding at anchor in midwinter with about 45 fathoms of chain out on one anchor, and about 35 fathoms out on the other; whether or not such a vessel, in such a situation, is in a position of any, and how great danger, and why? State fully.

Answer to Interrogatory Fifth. I should consider the ship in a dangerous position, so much so, as to require immediate aid, as soon as I could get it. She is liable to foul her anchors with every turn of the tide. If she fouled her anchors, of course they can't hold her. She is liable to drag her anchors and go ashore. She is also in danger from other vessels passing her. The danger would be increased in thick weather from what it would be in clear weather. In the winter we cannot count on clear weather any length of time.

Interrogatory Sixth. How long, in your judgment, would it be prudent to suffer a vessel to lie in that position without seeking relief?

Answer to Interrogatory Sixth. I have answered that. I have said distinctly, immediate aid.

Interrogatory Seventh. Suppose the Steamer "City of Boston" went for said ship, and found her in the position stated, and sent a boat to her in the evening, with a pilot; and suppose at the time the boat went and returned it was dark, with no moon or stars, the sky being overcast, and there was a heavy sea on from the eastward, and the wind was blowing from the north-northwest about eight knots, and suppose the boat was about twenty minutes or half an hour in returning from the ship to the steamer, and it was so dark that at times the two vessels could only be distinguished from the boat by their lights, and that this was in midwinter—say the first of January;—state what would be the character of such service; whether dangerous or otherwise; assuming that the boat had four men to man her, and a competent mate in command, and the boat being one of Francis's Metallic Life-Boats?

Answer to Interrogatory Seventh. I should think it would be dangerous; what I mean by that is, I don't consider it extremely dangerous, so that it could not be done. There is always danger in lowering a boat at night; the boat might be under the ship's channels and stave her.

Interrogatory Eighth. Whether or not at such time there is any and what more danger in boarding a ship thus at anchor, on the weather on the leeward side?

Answer to Interrogatory Eighth. There is more danger boarding on the weather side.

And in answer to cross-interrogatories propounded by Wm. Dehon, Esq., proctor of respondents, the said deponent further saith:

First Cross-Interrogatory. Is the fishing bank and shoal ground you have spoken of, laid down in any and what chart?

Answer to First Cross-Interrogatory. The depth of water is laid down on Blunt's chart; it does not contain any outline of the bank.

Second Cross-Interrogatory. Suppose the ship spoken of in the third interrogatory could pay out the whole 120 fathoms of one chain, and the whole 105 of the other, would not the danger be lessened?

Answer to Second Cross-Interrogatory. I should not think it would. It would not alter her position, at all, by having out 105 or 110 fathoms. She would be just as likely to foul her anchors with that length of chain as with sixty fathoms.

Third Cross-Interrogatory. If she could let go another anchor with 75 fathoms chain, would not that still more diminish the danger?

Answer to Third Cross-Interrogatory. That would diminish the danger, if she could let it go clear; it would be an additional anchor.

That would not do any good though, unless the ship drifted. If you let your anchor fall, it will fall right under foot; you would have no chance to pay out any scope.

Fourth Cross-Interrogatory. You assume, then, that the two anchors held her, and she would not drift?

Answer to Fourth Cross-Interrogatory. The ship was at anchor there, as I understood it, and not drifting.

Fifth Cross-Interrogatory. You mean then, if the two anchors held, there would be no need of the third then; but if they dragged, you mean to say the third would lessen the danger?

Answer to Fifth Cross-Interrogatory. It would a little.

Sixth Cross-Interrogatory. Are not your opinions, given in answer to the interrogatories of the libellant, based entirely on the facts therein stated, and not upon any observation or knowledge of the existing facts on the night of the 1st January, in regard to this ship?

Answer to Sixth Cross-Interrogatory. They are based upon the facts stated in the interrogatories as to the position of the ship and my knowledge of the bay.

Seventh Cross-Interrogatory. Do you know all the owners of the "City of Boston," and are any of them interested in the "John Eliot Thayer?"

Answer to Seventh Cross-Interrogatory. I am not aware that I know them all. Those that I do know are not interested in the "John Eliot Thayer."

GAINS SAMPSON.

Deposition of John W. Shaw.

October 13, A. D. 1854. Then the said John W. Shaw, having been by me first carefully examined, and cautioned and sworn to testify the whole truth, did depose, in answer to interrogatories propounded by D. Thaxter, Esq., proctor of the libellant, as follows:

Interrogatory First. What is your name, age, residence, occupation, and how long have you followed the same?

Answer to Interrogatory First. My name is John W. Shaw; my age is thirty-nine years; I am a master mariner, and have been seventeen years.

Interrogatory Second. Where have you sailed from during that period, and in what vessel are you now?

Answer to Interrogatory Second. For the last ten years I have been in the New Orleans and Liverpool trade, sailing from Boston. I have been absent at times two years without coming here. I am now in the Ship "Soldan," of 640 tons.

Interrogatory Third. Whether or not you have any and what knowledge of any shoal off Race Point, about seven miles north, and state how the current is off the cape?

Answer to Interrogatory Third. I know there is a little shoal

there, laying to the north of Race Point. I always found the tide to ebb and flow there the same as here, except the current was a little stronger. I never anchored off there.

Interrogatory Fourth. Suppose the Ship "Independence," of about 850 tons burthen, having on board the following ground tackle, namely: one anchor weighing 3750 pounds, and one weighing 3350 pounds, a stream anchor weighing 1300 pounds, and a kedge anchor weighing 700 pounds, one $1\frac{3}{4}$ inch chain 120 fathoms long, and one $1\frac{5}{8}$ inch 105 fathoms long, and $1\frac{1}{8}$ inch stream chain 75 fathoms long, and also having a large new hawser eight inches in size, should meet with a gale, and should first let go her larboard anchor in ten or fifteen fathoms of water, and cut away her foremast, and should afterwards, the gale continuing, let go her starboard anchor, and cut away her main and mizzen mast, and should bring up in ten or fifteen fathoms of water in a position where Race Point bore about south and was about eight miles distant, and Highland Light bore southeast-by-south $\frac{1}{2}$ south and about twelve miles distant, and suppose her to be thus riding at anchor in midwinter, with about forty-five fathoms of chain out on one anchor and about thirty-five fathoms out on the other; whether or not such a vessel in such a situation is in a position of any and how great danger, and why? State fully.

Answer to Interrogatory Fourth. If I had been there myself I should have supposed I was in danger, and would have got out of it as quickly as I possibly could. She might have fouled her anchors and drifted ashore if the wind had been that way; or if it had not been, she might have gone to sea.

Interrrogatory Fifth. How long in your judgment would it be prudent to suffer a vessel to be in that position without seeking relief?

Answer to Interrogatory Fifth. I should suppose that any man would naturally have taken the first aid that came to him. I speak for myself. I certainly should have done so.

And in answer to cross-interrogatories propounded by William Dehon, Esq., proctor of the respondent, the said deponent further saith.

First Cross-Interrogatory. Were you on the night of the first of January outside the harbor?

Answer to First Cross-Interrogatory. I was at sea; nowhere near Boston Harbor.

Second Cross-Interrogatory. How was the weather on Monday

rence to a ship that was dismasted. I said I was. That was the first I knew about it, and the first I knew of the ship's name was when I came here.

Fourth Cross-Interrogatory. What shoal do you allude to north of Race Point? What are its bearings and dimensions?

Answer to Fourth Cross-Interrogatory. I am not able to give any name for it; I don't know as there is any name for it. All I know is that there is a shoal there. I have found a spot there to the northward of Cape Cod. I cannot give its bearing, but I should judge it bore about north half east from Race Point. To the best of my judgment, I should suppose it was from eight to ten miles from Race Point. I am not able to state its dimensions. I have often seen vessels at anchor there and spoke them.

Fifth Cross-Interrogatory. Is it laid down on any and what chart?

Answer to Fifth Cross-Interrogatory. It is laid down in Blunt's chart.

Sixth Cross-Interrogatory. During the last ten years how much of your time has been spent away from Boston, and for what periods at a time.

Answer to Sixth Cross-Interrogatory. I have not been in Boston with a ship more than five times in the last eight years. I spent about eight months here two years ago. Previous to that I was here ten, twelve, perhaps twenty days, as soon as I could get a cargo and out again.

J. W. SHAW.

Deposition of Obed Baker.

October 12th, 1854. Then, the said Obed Baker, having been by me first carefully examined, and cautioned and sworn to testify the whole truth, did depose and say, in answer to interrogatories propounded by D. Thaxter, Esq., proctor of libellant, as follows:

Interrogatory First. What is your name, age, residence, occupation, and how long have you followed the same?

Answer to Interrogatory First. My name is Obed Baker, age thirty-seven years; I reside in Dennis, Mass., and have followed the seas twenty-seven years.

Interrogatory Second. How long have you followed the seas as master? In what line of business have you been principally engaged during that time?

saw the Steamship City of Boston going down the harbor. It had been snowing, and was snowing some at the time when she was going down the harbor. The wind was from the north or northwesterly, and heavy cloudy weather.

Interrogatory Fourth. Whether or not you have any and what acquaintance with the character of the water, and shoal off Cape Cod, and if yea, state what means of knowledge you have had, and state whether or not there is any and what shoal lying about north from Race Point, and about seven miles distant, and state what depth of water there is between the shoal and Race Point, and what depth of water there is on the shoal, and whether or not there is any current there?

Answer to Interrogatory Fourth. I have the acquaintance of it by passing over the water for the last twenty-seven years, and by being at anchor off there various times. I have always supposed there was a shoal or bank so called lying from north-by-east to northeast from Race Point, and seven to ten miles off. I am not able to say what depth of water there is between that and Race Point. On the shoal I should say there was from fourteen to sixteen fathoms. There was a strong current there.

Interrogatory Fifth. Suppose the Ship Independence, of about 850 tons burthen, having on board the following ground tackle, namely: one anchor weighing 3750 pounds, and one weighing 3350 pounds, a stream anchor weighing 1300 pounds, and a kedge anchor weighing 700 pounds, one $1\frac{3}{4}$ inch chain 120 fathoms long, and $1\frac{5}{8}$ inch chain 105 fathoms long, and $1\frac{1}{8}$ inch stream chain 75 fathoms long, and also having a large new hawser, eight inches in size, should meet with a gale, and should first let go her larboard anchor in ten or fifteen fathoms of water, and should cut away her foremast, and should afterward, the gale continuing, let go her starboard anchor, and cut away her main and mizzen mast, and should bring up in ten or fifteen fathoms of water, in a position where Race Point bore about south, and was about eight miles distant, and Highland Light bore southeast-by-south $\frac{1}{2}$ south, and about twelve miles distant, and suppose her to be thus riding at anchor in midwinter, with about 45 fathoms of chain out on one anchor, and about 35 fathoms out on the other; whether or not such a vessel, in such a condition, is in a position of any and how great danger, and why? State fully.

Answer to Interrogatory Fifth. I should think she was in a dangerous situation, in danger enough to seek assistance. The first reason is, she would be liable to foul her anchors with every turn of the tide, which would be every six hours. She would be in danger also, from lying there in a dark night, of being run over by other vessels going to and fro. If the anchors are foul they would be useless to hold her. Foul anchors will not hold.

Interrogatory Sixth. How long in your judgment would it be prudent to suffer a vessel to lie in that position without seeking relief?

Answer to Interrogatory Sixth. No longer than she possibly could obtain it.

And in answer to cross-interrogatories propounded by Mr. Dehon Esq., proctor of respondents, the said deponent further saith:

First Cross-Interrogatory. What was the wind, and how strong when you saw the steamer on 1st January, and where were you?

Answer to Cross-Interrogatory First. There was a strong breeze from the northward, I cannot say the precise point. I was standing at the end of Rowe's wharf. It was some time in the afternoon. The hour I cannot say.

Second Cross-Interrogatory. Give the dimensions and exact bearings of the shoal you speak of? What is it called? Is it laid down in any chart, and what?

Answer to Second Cross-Interrogatory. I cannot give the exact bearing or dimensions of the shoal. I have no name for it. I don't know of any name. I think I have seen laid down on some charters, but what or whose I cannot say. I have no chart that lays it down. I have frequently seen vessels at anchor there fishing. I cannot tell the depth there. I was near at anchor there. I have always heard it called a fishing bank.

Third Cross-Interrogatory. If the vessel spoken of in your answer to Interrogatory Sixth, had a light up that could be seen, could not vessels have readily avoided running into her?

Answer to Third Cross-Interrogatory. Not in thick dark night. A vessel cannot be seen far in a thick dark night.

Fourth Cross-Interrogatory. If her light could be seen a half a *a* mile, could not a vessel avoid her?

Answer to Fourth Cross-Interrogatory. They could.

Fifth Cross-Interrogatory. Then if the light of the ship could be seen half a mile, she would not be in danger of being run down?

Answer to Fifth Cross-Interrogatory. I don't know. She would be in danger of being run down at any time, because vessels seeing a light there would not suppose a vessel was at anchor there in winter-time, but what I say is, that half a mile is sufficient distance to avoid her if one knew what was there. A man coming into the bay and seeing a light there, passing either way, would naturally suppose it was a vessel under weigh, and not at anchor.

Sixth Cross-Interrogatory. Is it any proof that a ship's anchors are foul if she happens to have one or two turns in her chain not low down?

Answer to Cross-Interrogatory Sixth. The turns in her chains would not be low down then, would be high up. It is a proof that she has swung round; it is supposed that she had swung round her anchors, by having her chains crossed. In so doing there is a possibility, a probability of fouling her anchors. It is no proof that the ship's anchors are foul, because there are one or two turns in her chains

not low down. It has a tendency to prove that they are foul, because it shows that the vessel has swung round the anchors.

Seventh Cross-Interrogatory. What is a foul anchor?

Answer to Seventh Cross-Interrogatory. It is a chain around the stock sometimes, sometimes around the flues, and sometimes around both. If the chains were out at equal scope and the vessel dragged, they might drag together and foul.

Eighth Cross-Interrogatory. Do you now sail or have you sailed for the owners of the "City of Boston," or either of them?

Answer to Eighth Cross-Interrogatory. I do now sail for the owners of the "City of Boston," and have for six months.

OBED BAKER.

Deposition of Levi Taylor.

October 12, 1854. And now the said Levi Taylor, having been by me first carefully examined, and cautioned and sworn to testify the whole truth, did depose and say, in answer to interrogatories propounded by D. Thaxter, Esq., proctor of libellant, as follows:

Interrogatory First. State your name, age, residence, and occupation, and how long you have followed the same?

Answer to Interrogatory First. My name is Levi Taylor, age thirty years, residence Chatham, Mass. I am a master mariner, and have been six years.

Interrogatory Second. Whether you have any and what knowledge of the water and current off Race Point, Cape Cod?

Answer to Interrogatory Second. As regards the depth of water, I cannot state. There is generally a very strong current. From running from the Cape to Boston, I have always observed that there is a strong current. I am in the Philadelphia and Boston trade.

Interrogatory Third. Suppose the Ship Independence, of about 850 tons burthen, having on board the following ground tackle, namely, one anchor, weighing 3750 pounds, one weighing 3350 pounds, a stream anchor weighing 1300 pounds, and a kedge anchor weighing 700 pounds, one $1\frac{3}{4}$ inch chain 120 fathoms long, and one $1\frac{5}{8}$ inch chain 105 fathoms long, and $1\frac{1}{8}$ inch stream chain 75 fathoms long, and also having a large new hawser, eight inches in size, should meet with a gale of wind, and should first let go her larboard anchor in 10 or 15 fathoms of water, and cut away her foremast, and should afterwards, the gale continuing, let go her starboard anchor, and cut away her main and mizzen mast, and should bring up in 10 or 15 fathoms of water, in a position where Race Point bore about south, and was about eight miles distant from her, and Highland Light bore southeast-by-south $\frac{1}{2}$ south, and about twelve miles distant, and suppose her to be thus riding at anchor in midwinter, with about 45 fathoms of chain out on one anchor and about 35 fathoms out on the other, whether or not such a vessel in such a situation is in a position of any and how great danger? Why? State fully.

Answer to Interrogatory Third. I should think she was in a dangerous situation. In case of a north or northeast wind she lay very much exposed, and was liable to foul her anchors at any time in case the wind moderated. If she fouled her anchors, and a breeze sprung up from the north or northeast, there was a lee shore close aboard. When the anchors are foul, they are not worth much, not more than pieces of iron of the same weight.

Interrogatory Fourth. How long, in your judgment, would it be prudent to suffer a vessel to lie in that position without seeking relief?

Answer to Interrogatory Fourth. Not longer than she could get assistance.

And in answer to cross-interrogatories propounded by Wm. Dehon, Esq., proctor of respondents, the said deponent further saith:

First Cross-Interrogatory. Were you, on the night of first of January, outside the harbor?

Answer to First Cross-Interrogatory. I was at sea; I was in the Gulf Stream a long distance from the Point.

Second Cross-Interrogatory. How was the weather on Monday, January 2d?

Answer to Second Cross-Interrogatory. I know nothing about the weather here Sunday or Monday.

Third Cross-Interrogatory. Your opinions, then, which you have given, are founded entirely upon the case as put in the interrogatories, and not any observation or actual knowledge of the existing facts in this case?

Answer to Third Cross-Interrogatory. They are.

Fourth Cross-Interrogatory. Are you now, or have you been in the employ of the owners of the Steamer "City of Boston," or of the line in which she runs?

Answer to Fourth Cross-Interrogatory. I have been, but am not now. It is about thirteen months in their employ, and then only three weeks.

Fifth Cross-Interrogatory. What is the strength of the current you speak of, off Race Point?

Answer to Fifth Cross-Interrogatory. I should think about four knots, as nigh as I can tell.

LEVI TAYLOR.

Deposition of Matthew Hunt.

October 12th, A. D. 1854. And now the said Matthew Hunt, having been by me first carefully examined, and cautioned and sworn to testify the whole truth, did depose and say, in answer to interrogatories propounded by D. Thaxter, Esq., proctor of the libellant, as follows:

Interrogatory First. State your name, age, residence, and occupation, and how long you have followed the same?

Answer to Interrogatory First. My name is Matthew Hunt. I am a Boston pilot, and have been in the business rising of fifty years, and reside in Boston. My age is about sixty.

Interrogatory Second. Suppose the Ship Independence, of about 850 tons burthen, having on board the following ground tackle, namely, one anchor weighing 3750 pounds, and one weighing 3350 pounds, a stream anchor weighing 1300 pounds, and a kedge anchor weighing 700 pounds, one $1\frac{3}{4}$ inch chain 120 fathoms long, and $1\frac{5}{8}$ inch chain 105 fathoms long, and $1\frac{1}{8}$ inch stream chain 75 fathoms long, and also having a large hawser, eight inches in size, should meet with a gale, and should first let go her larboard anchor in ten or fifteen fathoms of water, and cut away her foremast, and should afterwards, the gale continuing, let go her starboard anchor, and cut away her main and mizzen mast, and should bring up in ten or fifteen fathoms, in a position where Race Point bore about south and was about eight miles distant, and Highland bore southeast-by-south $\frac{1}{2}$ south and about twelve miles distant from her, and suppose her to be thus riding at anchor in midwinter, with about forty-five fathoms of chain out on one anchor, and about thirty-five fathoms out on the other, whether or not such a vessel, in such a situation, is in a position of any, and what danger, and why? State fully.

Answer to Interrogatory Second. She is in a dangerous position. She is dependent entirely upon her anchors. If the wind changed or died away, she is liable at any change of wind or tide to foul her anchors, particularly where there is a current. If she fouled her anchors, she is liable to drift whenever it came on to blow in any direction.

Interrogatory Third. How long, in your judgment, would it be prudent to suffer a vessel to be in that position without seeking relief?

Answer to Interrogatory Third. It is prudent she should be moved the first moment they could get means to move her. I presume there is no merchant or person interested in navigation, but will admit that.

Interrogatory Fourth. In what way are the anchors placed in anchoring vessels to prevent their fouling?

Answer to Interrogatory Fourth. They are moored. Sometimes ships are moored by running out the chain twice the length they intend to ride by, and then heaving half the chain back. After having run out the whole length, they drop the other anchor, and then haul back so as to place the ship between the anchors. When the wind and tide is in the proper direction that you can pay out chain, and have your vessel go astern in the right direction, you then let go your second anchor, and heave back in the direction of the first. Ships riding at single anchor, and it is blowing hard, and necessary to drop another anchor, it is usual to hoist the jib or some head sail to sheer the ship, so as to spread the anchors. That is

done, so if you are obliged to pay out chains, the anchors shall be apart, so as not to come afoul of each other.

Interrogatory Fifth. State what you were doing on the first of January last?

Answer to Interrogatory Fifth. I was attending on the Steamer Alps to go to sea, but it came on to snow, and we delayed it till Monday morning, eight or nine o'clock. I should think the Alps was something like 800 tons. She was an iron propeller. I attended her from seven o'clock in the morning till about three in the afternoon; it continued to snow, and they gave it up. The appearance was of an easterly snow-storm. It was the Sunday the news came of the Ship "Independence" being off the Cape, with her masts cut away. The Alps is in the Liverpool trade.

Interrogatory Sixth. Suppose the Steamship "City of Boston" went for said ship, and found her in the position stated, and sent a boat to her in the evening, with a pilot; and suppose, at the time the boat went and returned, it was dark, with no moon or stars, the sky being overcast, and there was a heavy sea on from the eastward, and the wind was blowing from the north-northwest about eight knots, and suppose the boat was about twenty minutes or half an hour in returning from the ship to the steamer, and it was so dark that at times the two vessels could only be distinguished from the boat by their lights, and that this was in midwinter—say the first of January last; state what would be the character of such service—whether dangerous or otherwise—assuming that the boat had four men and a competent mate in command to man her, and the boat being one of Francis's metallic life-boats?

Answer to Interrogatory Sixth. I should think there was considerable perseverance and skill to get there, and dangerous at that, at the time represented.

Interrogatory Seventh. State whether or not, in going to and boarding a ship, in a night of the character stated in the last interrogatory, and the ship in the position in which it *it* has been stated to you in Interrogatory Second the Independence was, any and what degree of skill is required, and whether or not the service is one of any and what difficulty to good seamen?

Answer to Interrogatory Seventh. I should think that none but persevering men and pretty well skilled in the boat could do that duty. I don't think that ordinary men as you find them would do that duty; you could not drive them into the boat.

Interrogatory Eighth. Whether or not it requires any and what training to give a person the requisite skill to manage a boat safely on such a night as the one referred to?

Answer to Interrogatory Eighth. It requires practice, that men should have practice; green hands could not do it; what I mean by practice is, men being used to going in a boat; sailors generally are very clumsy in small boats; I don't mean coasters, or fishermen, but the rope-haulers—men who go in ships.

Interrogatory Ninth. Whether or not there is any and how much more danger in boarding a vessel, on such a night as described, on the weather than on the leeward side, and how is it as to danger whether the vessel be at anchor or under weigh?

Answer to Interrogatory Ninth. There would be no danger boarding on the lee, if the ship swung by a current so as to make a lee; but it would be very dangerous boarding on the weather side. The boat would be liable to fill with water, and if so, you would be liable to lose your men, although she did not sink.

Interrogatory Tenth. Whether or not, in your opinion, the Independence, assuming her position to be what it was stated to be in Interrogatory Second, could have been towed from where she lay without the aid of steam?

Answer to Interrogatory Tenth. No, unless she laid there long enough to have smooth weather and a fair wind.

And in answer to cross-interrogatories propounded by William Dehon, Esq., proctor of respondents, the said deponent further saith:

First Cross-Interrogatory. Were you, on the night of the first of January, outside the harbor?

Answer to First Cross-Interrogatory. I was not; I was in the city.

Second Cross-Interrogatory. How was the weather on Monday, January 2d.

Answer to Second Cross-Interrogatory. The wind was to the westward, and pretty fair pleasant weather. I mean the day. I went down in the Steamer "Alps" the day after I heard of the Ship "Independence."

Third Cross-Interrogatory. Your opinions which you have given are founded entirely upon the case as put in the Interrogatories, and not on any observations or actual knowledge of the existing facts in this case?

Answer to Third Cross-Interrogatory. They are.

MATTHEW HUNT.

Deposition of Richard Hennessey.

October 12th, A. D. 1854. And now the said Richard Hennessey, having been by me first carefully examined, and cautioned and sworn to testify the whole truth, did depose and say, in answer to interrogatories propounded by D. Thaxter, Esq., proctor of libellant, as follows, viz.:

Interrogatory First. State your name, age, residence, and occupation, and how long you have followed the same?

Answer to Interrogatory First. My name is Richard Hennessey; my age is forty years; I reside in Boston; I am now master of the Steamer "Rescue," and have been nearly two years; I have been a Boston pilot for twenty years. The "Rescue" is a tow-boat.

Interrogatory Second. Suppose the Ship "Independence," of about 850 tons burthen, having on board the following ground tackle, namely, one anchor weighing 3750 pounds, and one weighing 3350, a stream anchor weighing 1300 pounds, and a kedge anchor weighing 700 pounds; one $1\frac{3}{4}$ inch chain 120 fathoms long, and one $1\frac{5}{8}$ inch chain 105 fathoms long, and one $1\frac{1}{8}$ inch stream chain 75 fathoms long, and also having a large new hawser, eight inches in size, should meet with a gale of wind, and should first let go her larboard anchor in ten or fifteen fathoms of water, and cut away her foremast, and should afterwards, the gale continuing, let go her starboard anchor, and cut away her main and mizzen mast, and should bring up in ten or fifteen fathoms water, in a position where Race Point bore about south and was about eight miles distant, and Highland Light bore southeast-by-south $\frac{1}{2}$ south and about twelve miles distant from her, and suppose her to be thus riding at anchor in midwinter, with about 45 fathoms of chain out on one anchor and about 35 fathoms on the other, whether or not such a vessel in such a situation is in a position of any and how great danger, and why? State fully.

Answer to Interrogatory Second. I think she was in a dangerous situation, certainly, under such circumstances. The nature of the danger would depend entirely upon the weather. The ship, in a calm or in a moderate wind, or ordinary breeze, was liable to foul her anchors by going around them. If it should come on to blow while the ship was lying there, the only thing the ship would have to depend upon would be her anchors; if they were foul, they would be of no use to her. Every time the tide changes or the wind changes, a vessel is liable to foul her anchors.

Interrogatory Third. How long, in your judgment, would it be prudent to suffer a vessel to lie in that position, without seeking relief?

Answer to Interrogatory Third. If I were master of the ship, I should get it the first opportunity I could, and should think it my duty to do so.

Interrogatory Fourth. In what way are the anchors placed in anchoring vessels to prevent their fouling?

Answer to Interrogatory Fourth. In mooring a ship there are two methods: one is called a running moor. The first anchor is let go while the ship is going ahead. In that case they run out double the amount of cable they intend to keep on that anchor. When the first chain comes taut, they let go the second anchor, then heave in on the first till they get the ship at equal distance from the two anchors. Then she is moored. The second method is where a ship is riding at a single anchor. Finding it necessary to let go the second anchor, they hoist the jib or foretopmast stay sail to sheer the ship so as to separate the anchors. The second anchor is dropped the minute the ship stops sheering.

Interrogatory Fifth. Suppose the Steamship "City of Boston" went for said ship and found her in the position stated, and sent a boat to her in the evening, with a pilot, and suppose at the time the boat went and returned it was dark, with no moon or stars, the sky being overcast, and there was a heavy sea on from the eastward, and the wind was blowing from the north-northwest about eight knots, and suppose the boat was about twenty minutes or half an hour in returning from the ship to the steamer, and it was so dark that at times the two vessels could only be distinguished from the boat by their lights, and that this was in midwinter, say the first of January last, state what would be the character of such service, whether dangerous or otherwise, assuming that the boat had four men and a competent mate in command, to man her, and the boat being one of Francis's metallic life-boats?

Answer to Interrogatory Fifth. As far as the boat itself was concerned, it would be safe enough; as far as the skill of sailors generally goes in managing a boat, I had rather board her in a pilot's skiff alone, if I had got to board her, than go with them.

As a general thing, I don't think sailors have any knowledge of a boat at all. I don't think I should have been willing to have gone from the Steamer "City of Boston" in a boat that night under the command of any one, unless I could have commanded the boat myself, as you represent it.

Interrogatory Sixth. Whether or not it requires any and what training to give a person the requisite skill to manage a boat safely on such a night as the one referred to?

Answer to Interrogatory Sixth. Men without having a training certainly cannot do it. That is certain. Some men require more training than others, but a man should be trained with a boat and an oar, before he can be considered a skilful boatman, capable of managing a boat.

Interrogatory Seventh. Whether or not there is any and how much more danger in boarding a vessel on such a night as described on the weather than on the leeward side, and how is it as to danger whether the vessel be at anchor or under weigh?

Answer to Interrogatory Seventh. There is great difference between boarding a vessel on the weather or leeward side. No one acquainted with a ship will ever attempt to board her on the weather, if he can get on the leeward side. If a vessel is lying at anchor in still water, where there is no current, with her head to the wind, there is no lee and weather side. Where a ship under weigh is hove to for the purpose of receiving a boat, there is no danger boarding her, because she makes a perfect lee. I have boarded vessels when they were sailing under close-reefed main-topsails. I think at such a time, under the same circumstances, if the same ship had been lying at anchor, she could not have been boarded at all, unless possibly over the stern.

Interrogatory Eighth. Whether or not the "Rescue" was in a condition on the first day of January last, to go to said ship, and state what other tow-boats there were then in Boston?

Answer to Interrogatory Eighth. The "Rescue" was not in a condition to go to the ship. The "John Taylor" was here, but the "R. B. Forbes" was not. There were two other small tow-boats, but not fit to go to the ship.

And in answer to Cross-Interrogatories propounded by William Dehon, Esq., proctor of respondents, the said deponent further saith:

First Cross-Interrogatory. Were you, on the night of January 1st, last, outside the harbor?

Answer to First Cross-Interrogatory. I was not; I was in the city.

Second Cross-Interrogatory. How was the weather on Monday, January 2d?

Answer to Second Cross-Interrogatory. I don't recollect, having no occasion to remember it.

Third Cross-Interrogatory. Your opinions, then, which you have given, are founded entirely upon the case as put in the Interrogatories, and not on any observation or actual knowledge of the existing facts in this case?

Answer to Third Cross-Interrogatory. They are.

Direct Examination resumed.

First Direct Interrogatory resumed. Whether or not, in your opinion, the "Independence," assuming her position to be what it was stated to be in Interrogatory Second, could have been towed from where she lay without the aid of steam?

Answer to First Direct Interrogatory resumed. I don't think she could.

RICHARD HENNESSEY.

Deposition of John McField.

October 13th, A. D. 1854. And now the said John McField, having been by me first carefully examined, and cautioned and sworn to testify the whole truth, did depose and say, in answer to interrogatories propounded by D. Thaxter, Esq., proctor of the libellant, as follows:

Interrogatory First. State your name, age, residence, and occupation, and how long you have followed the same?

Answer to Interrogatory First. My name is John McField, my age is forty-seven years, residence, East Boston, and I am a pilot and have been twenty-one years.

Interrogatory Second. Suppose the Ship "Independence," of about 850 tons burthen, having on board the following ground tackle, namely, one anchor weighing 3750 pounds, and one weighing 3350 pounds, a stream anchor weighing 1300 pounds, and a kedge anchor

weighing 700 pounds, one $1\frac{3}{4}$ inch chain 120 fathoms long, and one $1\frac{5}{8}$ inch chain 105 fathoms long, and one $1\frac{1}{8}$ inch stream chain 75 fathoms long, and also having a large new hawser, eight inches in size, should meet with a gale, and should first let go her larboard anchor in ten or fifteen fathoms of water, and cut away her foremast, and should afterward, the gale continuing, let go her starboard anchor, and cut away her main and mizzen mast, and should bring up in ten or fifteen fathoms of water, in a position where Race Point bore about south and was about eight miles distant, and Highland Light bore southeast-by-south $\frac{1}{2}$ south and about twelve miles distant, and suppose her to be thus riding at anchor in midwinter, with about 45 fathoms out on one chain and about 35 fathoms out on the other, whether or not such a vessel in such a situation is in a position of any and how great danger, and why? State fully.

Answer to Interrogatory Second. Lying in that position, she would be liable to foul her anchors, for one thing, and to be run down, for another thing, in storms or thick weather. If she fouled her anchors, they would drag. She might drag her anchors and go to sea, or go ashore, and in that case would go to pieces very likely in that time of year. I should consider it a place of danger. She would be liable to foul her anchors every time she swung around.

Interrogatory Third. How long, in your judgment, would it be prudent to suffer a vessel to lie in that position, without seeking relief?

Answer to Interrogatory Third. As short a time as possible, I should think.

Interrogatory Fourth. Suppose the Steamer "City of Boston" went for said ship, and found her in the position stated, and sent a boat to her in the evening with a pilot, and suppose at the time the boat went and returned it was dark, with no moon or stars, the sky being overcast, and there was a heavy sea on from the eastward, and the wind was blowing from the north-northwest about eight knots, and suppose the boat was about twenty minutes to half an hour in returning from the ship to the steamer, and it was so dark that at times the two vessels could only be distinguished from the boat by their lights, and that this was in midwinter, say the first of January last, state what would be the character of such service, whether dangerous or otherwise, assuming that the boat had four men to man her and a competent mate in command, and the boat being one of Francis's metallic life-boats?

Answer to Interrogatory Fourth. It is dangerous in the night-time and in a heavy sea to board a ship in the Francis's life-boat or any other—the kind of boat don't make much difference. There is always danger, more or less, according to the circumstances. When I speak of the Francis's life-boats, I don't know much about them; I have no experience in them.

Interrogatory Fifth. Whether or not there would be any and how

much more danger in boarding such a vessel thus anchored on the weather, than on the leeward side, and why?

Answer to Interrogatory Fifth. There is less danger in boarding on the leeward than on the weather side, because the ship breaks the wind off. It is a matter of course almost to board on the lee side.

And in answer to Cross-Interrogatories propounded by Wm. Dehon, Esq., proctor of the respondent, the said deponent further saith.

First Cross-Interrogatory. Where were you on the night of January 1st, 1854, in port, or out of the harbor of Boston?

Answer to First Cross-Interrogatory. I was in port.

Second Cross-Interrogatory. From actual observation, then, you do not know the condition of the ship or wind that night?

Answer to Second Cross-Interrogatory. I do not.

JOHN McFIELD.

Deposition of Kilborn W. Freeman.

October 20th, A. D. 1854. And now the said Kilborn W. Freeman, having been by me first carefully examined, and cautioned and sworn to testify the whole truth, did depose and say, in answer to interrogatories propounded by D. Thaxter, Esq., proctor of the libellant, as follows, viz.:

Interrogatory First. State your name, age, residence, and occupation, and how long you have followed the same?

Answer to Interrogatory First. My name is Kilborn W. Freeman; my age is forty-eight; I reside in Provincetown, and am a mariner, and have been twenty-six years.

Interrogatory Second. Whether or not you have ever been a pilot, and during what period, and where?

Answer to Interrogatory Second. I held a commission from twelve to fifteen years at Provincetown, or Cape Cod Harbor; a branch pilot.

Interrogatory Third. Whether or not you have any and how extensive knowledge of the water and shoal off Cape Cod?

Answer to Interrogatory Third. I think I have pretty good knowledge.

Interrogatory Fourth. Whether or not you saw the Ship "Independence" as she lay at anchor off Race Point, about the first of January last, and where was she lying?

Answer to Interrogatory Fourth. I saw the ship on Saturday morning, if my memory serves me right. She was lying about north from Race Point, in about fifteen to sixteen fathoms of water. There is a shoal there. In extreme ebb I have known the water to be as low as nine fathoms and a half. The ship lay to the northeast. There is a three-knot current there in the high course of tides. I have

been at anchor there many a time catching halibut. I should think at low course of tides, the current would be from a knot and a half to two knots.

Interrogatory Fifth. Suppose the Ship "Independence," of about 850 tons burthen, having on board the following ground tackle, namely: one anchor weighing 3750 pounds, and one weighing 3350 pounds, a stream anchor weighing 1300 pounds, and a kedge anchor weighing 700 pounds; one $1\frac{3}{4}$ inch chain 120 fathoms long, and one $1\frac{5}{8}$ inch chain 105 fathoms long, and one $1\frac{1}{8}$ inch stream chain 75 fathoms long, and also having a large new hawser, eight inches in size, should meet with a gale, and should first let go her larboard anchor in ten or fifteen fathoms of water, and cut away her foremast, and should afterwards, the gale continuing, let go her starboard anchor, and cut away her main and mizzenmast, and should bring up where you saw her lying, and suppose her to be thus riding at anchor in midwinter, say at the time you saw her, with about forty-five fathoms of chain out on one anchor, and about thirty-five fathoms out on the other, whether or not such a vessel in such a situation is in a position of any and how great danger, and why? State fully.

Answer to Interrogatory Fifth. I shouldn't consider the ship safe; not but what she might ride in moderate weather. We never consider a ship safe at anchor in the bay; we try to get them out as soon as we can. We never anchor in the bay; we always proceed and get the ship out of the bay as soon as we can. We consider that our duty to all parties concerned. If we are compelled to anchor a vessel there, we consider it our duty to get it out as soon as we can. She was liable to foul her anchors. In moderate weather she can't help it, with every turn of the tide and shift of the wind. If a ship fouls her anchors, and a gale of wind comes on, the anchors wouldn't hold more than the weight of them, or a very little more. She is liable to drag her anchors. If she fouled her anchors in a northeast gale, she would soon drag into thirty fathoms of water. The ship bore about north from the Race, and the shoal lays north-northwest from the Race; and if the gale was from the northeast, she would soon drag into thirty fathoms of water. If her anchors were still foul, she would drift the faster into thirty fathoms chain out. If she had chain enough on board to hold her without anchors, of course she wouldn't drag. I shouldn't consider the ship safe there anyhow, in a northeast gale, with her anchors foul. I have been out in rough weather enough to know, from my own experience, that a ship with her tackling couldn't ride out a northeast gale on shoal ground. I have known a great many vessels come into the bay, inside of the Race, and have to cut away their masts, because they couldn't fetch the ship to.

Interrogatory Sixth. How long, in your judgment, would it be prudent to suffer a vessel to lie in that position without seeking relief?

Answer to Interrogatory Sixth. As quick as would be possible; I am speaking as though I had charge of the ship.

Interrogatory Seventh. What was the state of the weather and sea on Sunday and Sunday night, January 1st, and state how you know it?

Answer to Interrogatory Seventh. On Sunday morning it was a storm; snowed, I think, in the morning, and rained. In the afternoon it cleared up, quite moderate, and the wind to the northward and eastward. In the afternoon the wind started into the northward and westward; in the evening there was a whole-sail breeze, about an eight-knot breeze. At twelve o'clock at night it blew fresher,—the latter part of the night, and early in the morning, there was a fresh breeze. It was squally in the night. There was quite a heavy swell going. On Sunday the Ship Havre came up on the back side of the Cape, and came so nigh in, that the people concluded that the ship was coming ashore. They started to go for her assistance. Men wouldn't go. I, my two boys, and a man, went with another boy to the Race for a boat, which they obtained, and pulled down to the ship. They brought the ship to an anchor, and saved the ship. The tide was running the ship down toward the bar. The ship carried off my two boys, and I was very anxious about them during the night, and watched the weather.

Interrogatory Eighth. Whether or not, in your opinion, the "Independence," assuming her to be riding at anchor where you saw her, and to be in the condition stated in the Fifth Interrogatory, could have been towed from where she lay without the aid of steam?

Answer to Interrogatory Eighth. Yes; she might have been towed into Provincetown Harbor, taking advantage of a favorable tide and wind. If she had been clear of her anchors Sunday morning, and anybody had known the position of the ship, I don't know but what she might have been towed in, in the course of Sunday and Monday. The wind was to the northward and eastward Sunday morning. Consequently, if we had taken her in tow early enough, I think she might have been got in, in two days, into Provincetown. There are no impossibilities, if everything works favorable, about such a thing as that. Taking the wind as it was Monday, west, or northward and westward, she could not have been towed into Provincetown, nor into Boston. The wind was to the northwest, or to the westward of it, three o'clock Sunday afternoon.

And in answer to Cross-Interrogatories propounded by William Dehon, Esq., proctor of respondents, the said deponent further saith:

First Cross-Interrogatory. How were you employed on Saturday morning? When you saw the ship, how near to her were you?

Answer to First Cross-Interrogatory. I was on the hill, and saw the "Independence" then, some ten to twelve miles off.

Second Cross-Interrogatory. Would it make no difference in the "Independence" dragging, as referred to in your answer to the Fifth Interrogatory, if you had 75 fathoms of one chain, and 70 of the

other to pay out, and with two anchors, and a 1⅛ inch chain, and an eight inch hawser on deck ready for use?

Answer to Second Cross-Interrogatory. With her anchors foul, it wouldn't hold her in a gale of wind. Of course it would make a difference; the more iron you put down, the slower a vessel would drag in a gale of wind.

Third Cross-Interrogatory. Wouldn't that additional tackle, if used, be sufficient to hold her in any ordinary gale, paying out the balance of the 145 fathoms?

Answer to Third Cross-Interrogatory. I shouldn't risk a vessel in my charge with that. I shouldn't consider her safe. I mean a ship with her masts. I don't know what you mean by an ordinary gale. I shouldn't consider the "Independence" safe in a gale of wind, not if the risk was upon me.

Fourth Cross-Interrogatory. If a vessel's anchors are fouled, can't they be righted one at a time and cleared?

Answer to Fourth Cross-Interrogatory. Of course they can, if there is time for it and men enough.

Fifth Cross-Interrogatory. Did you ever sail in a ship with tackle such as the "Independence" had? If yea, what was her name?

Answer to Fifth Cross-Interrogatory. I have been in the Steamer "Baltic" as pilot. I presume her tackle was as heavy as the "Independence's;" I was at anchor in her in Provincetown harbor.

Sixth Cross-Interrogatory. Wasn't the sea on Sunday and Sunday night a long ground swell, caused by the recent gale?

Answer to Sixth Cross-Interrogatory. I presume there was. I wasn't out. There couldn't be otherwise than a bad sea. I was out on Sunday.

Seventh Cross-Interrogatory. What weight of tackle do you think sufficient for a ship of 850 tons?

Answer to Seventh Cross-Interrogatory. I think the Independence's was sufficient; that is, as we tackle our ships.

Direct Examination Resumed.

First Direct Interrogatory resumed. Whether or not anchors can be cleared, when they are foul in a gale?

Answer to First Direct Interrogatory resumed. I think it would be a very bad piece of work to clear anchors on a shoal ground in a gale of wind.

KILBORN W. FREEMAN.

Deposition of Simeon Nickerson.

October 24th, A. D. 1854. And now the said Simeon Nickerson, having been by me first carefully examined, and cautioned and sworn to testify the whole truth, did depose and say, in answer to interrogatories propounded by D. Thaxter, Esq., proctor of the libellant, as follows:

Interrogatory First. What is your name, age, residence, and occupation, and how long have you followed the same?

Answer to Interrogatory First. My name is Simeon Nickerson; age, forty years; I reside in Provincetown, and am a mariner, and have followed the seas about thirty years.

Interrogatory Second. Whether or not you have been a pilot, during any and what period, and where?

Answer to Interrogatory Second. I have been piloting about fifteen years in Provincetown and Boston Bay. I have had a branch about four years.

Interrogatory Third. Whether or not you boarded the Ship "Havre" on Sunday the 1st January last; if yea, state where you boarded her from, and where she was at the time?

Answer to Interrogatory Third. I left Race Point in a boat, and boarded the "Havre" on Peeked Hill Bars, in four fathoms of water, about five miles from Race Point, and about three quarters of a mile from the shore.

Interrogatory Fourth. What had you been doing that day, prior to that time?

Answer to Interrogatory Fourth. I had been on the Customhouse watch for nearly twenty-four hours previous. I was watching sugar there, that came out of the Bark "Lysander," that came ashore there.

Interrogatory Fifth. Where and when did you first see the ship? What time did you start to go to her, and where from, and who went with you, and what did you do about getting men to go with you?

Answer to Interrogatory Fifth. I saw the ship about nine o'clock in the morning, Sunday morning, on the back of the Cape. I left for Race Point, from where I was, for a boat, about ten o'clock. The vessel had a signal for a pilot. I had my own son, and Alexander Freeman and John H. Freeman with me. I suppose I asked a hundred men to go with me before I reached Race Point, but they refused. These boys volunteered to go with me. The sea was very rough on the shore, was the reason why I couldn't get the men to go with me. They thought it wasn't safe. By going to Race Point I smoothed the water some.

Interrogatory Sixth. What had been the weather during Sunday, and how was the sea prior and up to the time when you boarded the ship?

Answer to Interrogatory Sixth. The weather was squally, all day Sunday, looked like another storm. There was a heavy sea heaving in from the eastward. The wind was moderate in the morning, but it was lowery weather, half snow and rain—ugly-looking weather.

Interrogatory Seventh. What was first done in regard to the ship by you, after you started in the boat for her.

Answer to Interrogatory Seventh. I got there as soon as I could, after I started for her. When I first got aboard of the ship, I hove

the lead over, and found from four fathoms of water. It was calm, and of course we could not do anything then. There was a strong ebb tide. When I first left Race Point in the boat, the ship was standing towards Race Point. When I got near enough to hail, I hailed him to let his anchor go. I concluded he was going on to the beach without letting his anchor go.

Interrogatory Eighth. State how the wind was when you boarded the ship, how it continued, and what was done with the ship?

Answer to Interrogatory Eighth. It was calm when I boarded the ship; in about fifteen minutes after I got aboard, it sprung up a breeze from the northwest, and I got the ship under weigh, and started off. I suppose, I don't know exactly, it was about one or two o'clock P. M. when I reached the ship. I made the best of our way from land, and reached Cape Ann about three o'clock the next morning. Her port of destination was Boston.

Interrogatory Ninth. Whether or not did you see the Ship "Independence," or the Steamer "City of Boston" that night, and about what time was it?

Answer to Interrogatory Ninth. I saw the "Independence" that night about seven o'clock, and supposed the steamer was there. I saw three lights there.

Interrogatory Tenth. What was the state of the wind, and sea, and weather during the night? State fully, and state what sail the ship carried?

Answer to Interrogatory Tenth. We carried all sail until eleven o'clock at night. We then double-reefed our topsails, because the wind was so heavy, and squally weather from the northwest. It was very squally during the night, a strong breeze from the westward. We reefed our topsails because we were obliged to. We were very anxious to reach some port, and carried all the sail we could. We shouldn't have reefed if we had not been obliged to. There was an ugly sea that night. After the wind heaved from the northwest, the sea from the northwest with this easterly swell made a bad sea. The weather was cloudy all night. We had no snow after 12 o'clock. The weather was rather more pleasant after twelve o'clock, although there was a strong breeze. There were a few snow-squalls before twelve.

Interrogatory Eleventh. Whether or not the young men went with the ship to Cape Ann, and why?

Answer to Interrogatory Eleventh. They did, because it was so rough, and the wind from the northwest, and an ebb tide we couldn't reach the Race. It was so rough I couldn't land them on the Race or anywhere else on the beach.

Interrogatory Twelfth. How old were they? Whether or not they had any and what knowledge of handling a boat?

Answer to Interrogatory Twelfth. My son is seventeen years old; he was brought up in a boat. All Provincetown boys know as much about a boat as a man; they are in a boat very young.

Interrogatory Thirteen. Where was the boat that you went to the ship in, while the ship lay at anchor, and what, if any, effect did the sea have on it?

Answer to Interrogatory Thirteen. I left the two Freeman boys in the boat to take care of the boat until we had wind enough to get the ship under weigh. We filled the boat with water in trying to get the boat on board the ship, on account of the sea being so heavy and the ship rolling down.

And in cross-interrogatories propounded by William Dehon, Esq., proctor of the respondents, the said deponent further saith:

First Cross-Interrogatory. Where were you at the time you double-reefed your topsails, and how far from the Race?

Answer to First Cross-Interrogatory. I suppose we were half the bay over; that, as near as I can come to it; ten or twelve miles perhaps from the "Independence."

Second Cross-Interrogatory. What time did you get sail on the "Harvard," and were you under full sail till eleven o'clock?

Answer to Second Cross-Interrogatory. I should think we got sail on between two and three o'clock; I can't say certain about it. We were under full sail till eleven P.M., what she had; her jibboom and foretopsail were gone.

Third Cross-Interrogatory. What time was it when you saw the "Independence," and how far distant were you, and in what direction from her?

Answer to Third Cross-Interrogatory. I saw the "Independence" at eleven P.M., about half a mile distant from her I should suppose. I don't think I shall tell that story over again. I am willing to tell the story over again, but I have told it once. I suppose I was an east-northeast course from her.

It had been calm I suppose about three quarters of an hour when I got to the ship.

SIMEON NICKERSON.

Deposition of Alexander W. Freeman.

October 24th, A. D. 1854. And now the said Alexander W. Freeman, having been by me first carefully examined, and cautioned and sworn to testify the whole truth, did depose and say, in answer to interrogatories propounded by D. Thaxter, Esq., proctor of the libellant, as follows:

Interrogatory First. What is your name, age, residence, and occupation?

Answer to Interrogatory First. My name is Alexander W. Freeman; I am nearly seventeen years old; I reside in Provincetown, and am clerk in a store.

Interrogatory Second. Whether or not you boarded the Ship Havre on Sunday, the 1st of January last?

Answer to Interrogatory Second. I did.

Interrogatory Third. Where and when did you first see the ship; what time did you start to go to her, and where from, and who went with you, and what, if anything, was done to get men to go in her, and by whom?

Answer to Interrogatory Third. I first see the ship about 9 A.M., at the back side of the Cape. We started for the ship about ten o'clock; my brother, John H. Freeman, went with me. He is about nineteen years old, and is in Francisco now, third mate of the clipper Ship "Northern Light." He, Mr. Nickerson, asked a hundred men to go to the ship, and they said they wouldn't go, because it wasn't safe. We volunteered to go.

Interrogatory Fourth. State how the wind was when you boarded the ship, and how it continued, and what was done with the ship?

Answer to Interrogatory Fourth. It was calm when we boarded the ship. We went alongside; Mr. Nickerson and his son got on board, leaving my brother and myself in the boat to take care of it. Shortly after the wind came up from the northwest which made a heavy sea. Previous to that there had been quite a swell. The ship was got under weigh by Mr. Nickerson, and got off. We kept in the boat to keep her away from the ship.

Interrogatory Fifth. Whether or not you went in the ship to Cape Ann, and if so, why?

Answer to Interrogatory Fifth. We did; because it was not safe for us to go ashore; the tide run so strong. We couldn't pull against the tide and sea together.

Interrogatory Sixth. What was the state of the wind, and sea, and weather during the night? State fully, and what sail the ship carried.

Answer to Interrogatory Sixth. During the night I wasn't on deck much. I got wet in the boat, and was below drying my clothes. When we came alongside with the boat, the ship gave a lurch, two seas coming together, and the boat filled. We dropped astern and bailed her out, and then hauled alongside, and got out, and went below, and didn't come up till they reefed top-sails. I helped reef top-sails. The wind was then blowing from the northwest. After that I went below and remained there.

Interrogatory Seventh. Whether or not you and your brother had any knowledge in handling boats?

Answer to Interrogatory Seventh. Yes, sir; I have handled boats ever since I was big enough to get in one. I know all about them.

A. W. FREEMAN.

Deposition of Samuel Roberts.

October 24th, A. D. 1854. And now the said Samuel Roberts, having been by me first carefully examined and cautioned, and sworn to testify the whole truth, did depose and say, in answer to

interrogatories propounded by D. Thaxter, Esq., proctor for the libellants, as follows:

Interrogatory First. State your name, age, residence, and occupation, and how long you have followed the same?

Answer to Interrogatory First. My name is Samuel Roberts; I am nearly thirty-two years old; I reside in Wellfleet, and am a mariner, and have been twenty-two years.

Interrogatory Second. Whether or not you boarded the Ship "Independence" off Race Point at any time during last winter; if yea, state the day, and the time of day that you went aboard of her, where she was lying, and in what condition you found her when you got aboard of her?

Answer to Interrogatory Second. I did board her, on Friday, the day after the gale, about four o'clock, P.M. She was at anchor, with all her masts gone. The foremast had gone clear of the deck. The main mast and mizzen mast lay on the larboard side of the quarter.

Interrogatory Third. State when you got on board the ship, whether you had any conversation with the Captain of her, about getting steam from Boston; if yea, state it?

Answer to Interrogatory Third. I had. There was talk between the Captain and me, about getting word to Boston to get a steamer to him. I think the first proposal I made was about carrying a letter to Provincetown. I told him I could go into Provincetown that night, and carry a letter there, and then get a man to carry it through to Truro, and it would arrive in Boston Saturday night, if the roads weren't blocked up. I think he first proposed my coming to Boston to fetch a letter. He wanted to know how long it would take me as the wind and weather was then. I told him, as wind and weather was then, I could come to Boston some time between then and daylight in the morning. He asked me if that wouldn't be the quickest despatch for him to get word here. I told him I thought it would, but I didn't want to come back here. He asked me what I would come for; I told him I wouldn't agree to come right to Boston that night; I wouldn't be bound to come, whether the weather permitted or not. I told him if he would give me four hundred dollars I would take a letter; and if there was any such thing as getting to Boston, I would come; and if I failed in getting here, I would put the letter through the quickest way I could. He offered me two hundred dollars, I think, to come. I told him I couldn't come for any less than I had offered, as my business was such I might lose five hundred just by coming back and stopping here two days. He came to the conclusion to give me four hundred dollars, and gave me an order on Mr. Hemmenway for four hundred dollars. I took a letter and started. I was in a schooner of 189 tons. I was from Boston, bound to Virginia after a load of oysters. My vessel was in ballast. I didn't get to Boston that night. I put into Provincetown on ac-

count of the weather. It commenced to snow about nine o'clock, P.M. and snowed till about two A.M. I started about half past nine to put back into Provincetown. The letter was carried to Boston from Provincetown.

Interrogatory Fourth. Whether or not did any person, and who, go from the ship with you; whether or not you had any, and what directions from Captain Choate as to what you were to do upon your arrival in Boston?

Answer to Interrogatory Fourth. A young man went with me from the ship; his name I don't know; he was put on board, so that if I arrived in Boston before daylight, he could go up to Mr. Hemmenway's house and see him, Captain Choate said; I did not know where Mr. Hemmenway lived. Captain Choate concluded it would be best to send this young man with me. On my arrival in Boston, I was to deliver my letter to Mr. Hemmenway.

SAMUEL ROBERTS.

United States of America, District of Massachusetts, *ss:*

I, Elias Merwin, a Commissioner duly appointed by the Circuit Court of the United States, for the District of Massachusetts, under and by virtue of the "Act for the more convenient taking of affidavits, and bail in civil causes depending in the Courts of the United States, and the acts additional thereto," do certify, that the cause for taking the foregoing deposition is, that the testimony of the said witnesses is material on the trial of the cause named in the said caption; that the time and place for taking said depositions were agreed upon by the parties; that on the several days named in the said caption, I was attended by the said parties and their proctors, and by the said witnesses and each of said witnesses was by me carefully examined and cautioned, and sworn, and the testimony by him given was by me reduced to writing, and thereafter subscribed by the said witness in my presence—and that I am not of counsel or attorney, nor in any way interested in the event of the cause named in the said caption.

E. MERWIN,
U. S. Commissioner.

Agreed Facts.

The parties agree:

1. That the Ship "Independence" is of the burden of 827 tons.
2. That the cargo on board the Steamship "City of Boston," was of the value of $43,716 14.
3. That the statement and valuation of Flowers and Lapham, (selected by the parties for that purpose), are correct—(valuation of the steamer, $41,278.)
4. That the Steamship City of Boston is and was engaged in the freighting business between Philadelphia and Boston, and with the Steamer "City of New York," form a regular line between those cities.

5. That all the policies of insurance of the steamer with one exception had a clause substantially as follows: "Taking the risk at sea, or in port, in docks, or on ways, with permission to sail with or without pilots, and to tow and assist vessels in all situations. Partial loss to be computed on each specification only, as though separately insured. It is understood that this company are not liable for any derangment or breakage of the machinery, or bursting of the boilers, unless occasioned by stranding or collision with another vessel, but if she take fire, and any part of the machinery or boilers be damaged, the company are to be liable therefor. It is also understood that the company are not liable for the expense of any delay consequent upon repairs of any kind." And that the policy forming the exception, differed simply in this—that the privilege given to the steamer to tow vessels was confined to the towage or assistance of vessels in distress.

6. That all or nearly all of the bills of lading of the cargo of the steamer were similar to the one annexed hereto, and had therein a clause allowing towage of vessels as stated, and as appears by the *stamp* on the one annexed.

7. That Blunt's Chart may be referred to.

8. That the order for $400 on the owners, given by Captain Choate to Captain Roberts, was paid.

D. THAXTER,
For Libellant.
WM. DEHON,
For Respondent.

Copy Bill of Lading.

Shipped, in good order and condition, by Aaron S. Lippincott, in and upon the Steamship called the "City of Boston," whereof Fisher is master for this present voyage, and now lying in the port of Philadelphia, and bound for Boston, six cases merchandise:

[Copy
(Stamp referred to.)

A X 2598 To 2602 A Y 2650 Damages either by fire or collision, all casualties of whatever nature, incident and peculiar to steamers or to steam navigation excepted. Liberty is hereby granted to sail with or without pilots, and to tow and assist vessels in distress, weight, contents and value unknown. Not accountable for leakage or rust. No damage will be allowed after the goods are taken from the landing-place.]

being marked and numbered as in the margin, to be delivered in like good order and condition, at the aforesaid port of Boston (the dangers of the sea only excepted), unto Reed, Chadwick, and Dexter, or to their assigns, he or they paying freight for the said goods at the rate of eight cents per foot, without primage and average accustomed. In witness whereof, the master or purser of the said vessel hath

affirmed to two Bills of Lading, all of this tenor and date; one of which being accomplished the others to stand void.

Dated at Philadelphia the 21 day of December, 1853.

Certificate of Flowers & Upham.

We, the undersigned, having been called on to examine and appraise the Steamer "City of Boston," and having made a faithful examination, report as follows:

Said steamship now lies at T wharf, in Boston. Her dimensions as per custom-house register, are as follows: Length 169 feet; breadth 26 feet 3 inches; depth 18 feet 6 inches; tonnage $558\frac{59}{95}$ tons; has two engines, with cylinders 34 inches by 30 inches, with 276 horse-power; her draft of water as she now lies is fifteen feet aft and 10 feet forward; the space above water forward is 18 feet to chock; and from chock to top of forward-house 2 feet; the space above water aft is 13 feet 4 inches, to top of rail. We estimate the value of said Steamship "City of Boston," to have been, in January, 1854, forty-one thousand two hundred and eighty-seven dollars ($41,287).

WILLIAM FLOWERS,
SAMUEL UPHAM.

Boston, October 13th, 1854.

DEPOSITIONS ON THE PART OF THE DEFENDANT.

Deposition of Captain Choate.

FISHER et al.
v.
SHIP "INDEPENDENCE."

District Court of the U. S. for the District of Massachusetts.

United States of America, District of Massachusetts.

Be it remembered, that on the day of January, in the year of our Lord eighteen hundred and fifty-four, at Boston, in said District of Massachusetts, before me, Edward J. Loring, a commissioner in and for the District of Massachusetts, to take affidavit and bail in civil causes depending in the Courts of the United States, appointed by the Circuit Court of the United States for the First Circuit, under the acts of Congress in such case made and provided, personally appeared George Choate, a witness of sound mind and lawful age, a witness for the claimants in a certain civil suit, depending in the District Court of the United States, in and for the First Circuit and District of Massachusetts, wherein Fisher is plaintiff and Ship "Independence" is defendant.

And the said Choate, being by me first carefully examined, and cautioned and sworn to testify the whole truth, did depose and say as follows, viz.:

I, George Choate, of Medford, in the State of Massachusetts, of lawful age to testify on oath, depose and say, in answer to interrogatories by William Dehon, Esq., counsel for the claimants, the Ship "Independence" (Augustus Hemenway).

1. Did you sail from Boston as master of the Ship "Independence" on the 28th December last, and where were you bound? Who owner her?

Answer. I sailed in said ship at said time as master, bound to Valparaiso; Mr. Hemenway owner her.

2. How was the weather during that day and the next? If you say there was a gale, state when it commenced and when it ended?

Answer. A gale came on Wednesday night after twelve o'clock; the 28th was Wednesday; it ended or broke up at twelve o'clock, Thursday night.

3. Did you at any time during said gale cut away your masts and let go your anchors? If yea, at what time and on what day?

Answer. I cut away the foremast about three o'clock, Thursday afternoon, and I cut away the main and mizzen mast about seven o'clock, Thursday evening, and I let go the larboard anchor at three o'clock, and I let go the starboard anchor about seven o'clock, Thursday.

4. How soon did the weather clear up, and where was the vessel when it cleared.

Answer. The weather cleared up between two and three o'clock, Friday morning, and the Highland Light bore southeast half south, and Race Point Light south-by-west, about five miles off; the Race Light.

5. How were you occupied during Friday on board the "Independence?"

Answer. Clearing the chains which were below deck, getting them on deck, and getting the stream anchor ready, and the stream chain to let go in case of necessity.

6. Did you send any and what messenger to Mr. Hemmenway, and when, and by whom?

Answer. (Mr. Thaxter, for libellants, objects.) I sent a messenger to Mr. Hemmenway. (Mr. Thaxter objects further that the message if in writing be produced.) It was in writing. I wrote him I was dismasted off the Cape, and that I wished him to send me a steamer to tow the ship to Boston. I sent the message about half past four Friday afternoon by the schooner R. H. Kendell or H. R. Kendell—a small schooner 75 or 80 tons.

7. How was the weather on Saturday? Did you, during the afternoon or evening of that day, see anything of the Steamer

"City of Boston?" Did she come alongside, and had you any and what conversation with the captain?

Answer. The weather on Saturday was moderate weather from the westward. About seven, or half past seven, or about that, I saw the Steamer City of Boston; she came near us; she did not come alongside; her captain came aboard me in his boat; he wanted to tow the ship to Boston; I refused his assistance, without making a bargain for some stated sum; he would not consent to making a bargain, and I would not accept his services.

8. When you declined to receive assistance from the Steamer "City of Boston," whether or not did you consider your vessel in danger?

Answer. I did not.

9. Whether or not did the steamer subsequently come to the ship? If yea, on what day and what hour? Did any one come from the steamer to your ship as agent for underwriters and owners? If yea, who?

Answer. (Mr. Thaxter objects for form and substance.) The steamer subsequently came to the ship on Sunday night, at I should think about half past seven. Mr. Fowler, the pilot, came on board, and he brought a letter from Mr. Hemmenway, stating the underwriter's agent, Mr. Baker, was on board the boat. (Mr. Thaxter objects to the deponent's statement, the letter not being produced.)

10. How was the sea at the time the steamer put the pilot aboard Sunday night, and how were the wind and weather?

Answer. The sea was quite smooth; the wind was from the northwest, a moderate breeze; the weather pleasant and clear.

11. How was the weather from Saturday noon till Monday noon, and how was the sea?

Answer. Saturday night the wind was from the eastward; moderate breeze and rainy weather; after twelve o'clock Sunday noon it was pleasant, and the wind from the westward; moderate breeze, four or five knot breeze, and it continued moderate and pleasant till Monday noon.

12. During Saturday and Sunday, had the ship dragged her anchors at all?

Answer. No, sir.

13. What number of boats had the "Independence," and what were their size? were either of them and which stove, and when? and what was the condition of the others?

Answer. The Independence had three boats—the two quarter boats were called twenty-two feet boats, the other was a large boat about twenty or twenty-six feet, and built expressly for carrying large cargoes. We lost the larboard quarter boat; it was washed away from the frames on Thursday morning about four o'clock; the others were in good order.

14. How much chain had you out during the gale?

Answer. Forty-five and fifty fathoms on one anchor, forty-five and fifty on the other.

15. Had she any more out afterwards?

Answer. She did not.

16. What proportion of your length of chain had you out at any time, from the time you anchored till the steamer took you in tow?

Answer. About half, I should think.

17. How many did you number, crew and officers, all told?

Answer. Twenty-six, I think.

18. How was said vessel fitted with anchors and chains? State what she had, and the weight of anchors, and size of chains, and what was her tonnage?

Answer. She had two bower anchors, one weighed 3750, one about 3350, and her stream anchor about 1300, and kedge about 700; she had two bower chains, one an inch and three-quarters, and the other an inch and eleventh-sixteenths; she had a stream chain an inch and an eighth; one of the bower chains was 120 fathoms long, the other 105 fathoms, the stream chain was seventy-five fathoms long. We had a new seven and a half inch hawser, about one hundred and twenty fathoms long; that was all the ground tackle. Her tonnage was 827 tons.

19. How did she compare in ground tackle with vessels of her class? Had she more or less than usual?

Answer. She had rather more, I think, heavier anchors and longer chains.

20. In what trade was she employed, and do vessels need more or less anchors and chains than in ordinary employment, and why?

Answer. She was employed in the Valparaiso trade. They need better anchors and better chains, because it is an open roadstead, and they are exposed to violent northers in the winter season, and have deep water and bad holding ground.

21. How many winters have you been at Valparaiso, at anchor in said vessel?

Answer. Three.

22. Were any vessels in sight during Saturday and Sunday, while you were at Cape Cod, that you could have signalized in case of need?

Answer. Several small vessels, none very large.

23. Did any other and what vessel offer you assistance after the "City of Boston" left you the first time? Did you decline or accept, and why?

The Bark "Helen" did. (Mr. Thaxter objects to the question.) I refused it, because I did not consider I was in any danger, and I could get to Boston myself as well as she could tow me.

24. Whether or not was your vessel tight, while you lay off the Cape?

Answer. Perfectly tight.

25. Whether or not was your steering apparatus in good order and condition, or otherwise?

Answer. In good, perfect order.

26. Whether you made any, and if any, what preparations for rigging jury masts? Whether or not you had any, and what supply of sails, rigging, rudder, and steering apparatus?

Answer. I had got all ready to get up jury masts by Sunday morning. We had some spare spars and rigging, and a complete suit of sails below, and plenty of rigging; the steering apparatus and rudder were good.

27. How long would it have taken you on Sunday to have rigged jury masts and put sail on the vessel?

Answer. About a day.

28. What was it your intention to do on Monday, had not a steamer been sent to you?

Answer. To get up jury masts.

29. Why did you do it before?

Answer. I had sent up to Boston and I was in hourly expectation the Steamer "Forbes" would be down, and then I thought it important to get the chains clear the first day after the gale, in case another should come on.

30. Whether or not did you consider your ship in danger, during Friday, Saturday, and Sunday?

Answer. I did not.

31. In your judgment as a nautical man, how long could said ship have rode in safety where she was, with the chains and anchors she had?

Answer. She would have rode longer than any light boat on the coast, perhaps.

32. Whether or not were the stream and kedge anchors got on deck on Friday A.M. ready for use? Whether or not the same were used?

Answer. They were on deck already; they were not used at all.

33. Whether or not, while lying at anchor in said vessel at Valparaiso, did you meet with heavy northers; if yea, did you ever know said vessel to drag her anchors?

Answer. I have met with very heavy northers. I never knew said vessel to drag her anchors.

Cross-Interrogatories by Mr. Thaxter, counsel for libellants (Fisher et al.).

1. When you cut away the foremast, and let go your larboard anchor, did her anchor hold, or did she drift?

Answer. She brought up in ten fathoms; sea struck her in ten minutes after she brought up, and she broke adrift again, and I let her drift. She was in twenty fathoms. I let her drift till seven

o'clock, when the anchor hooked the bottom again, and she bro't up; and then I let go the other anchor, and cut away the main and mizzen mast.

2. Could you have let out any more chain than you did, and have you not stated that you could not, as the chain got foul below, you could not let out any more?

Answer. I could not let out any more at that time; the chain was foul in the locker.

3. Was the Schooner "R. H. Kendall" the first vessel you spoke with after the gale?

Answer. She was.

4. When Capt. Fisher first spoke you on Saturday night, did he not ask you if you wanted assistance, and did you not reply that you did, and ask him to come on board?

Answer. Yes, sir.

5. Did Capt. Fisher ask you to come the steamer, and did you not reply that your boats were stove, or something to that effect, and what?

Answer. He asked me to come aboard, and I told him to lower his own boat and come on board, as he could get it out readier than I could mine; I did not reply that my boats were stove.

6. Will you swear that you did not say to Capt. Fisher that your boat was stove, or anything to that effect?

Answer. I will swear so.

7. When Capt. Fisher came on board your ship on Saturday, did you not invite him into the cabin, and ask him what he would tow the ship into Boston for, and did he not reply that he would tow her to Boston, but was not prepared to make any bargain; and did you not then say that you sent the day before to Boston for the "R. B. Forbes," and that you expected her every moment or hour, and that you would wait for her; and did he not then reply that he would proceed to Boston and report your condition; and was not this, in substance, all that passed between you and Capt. Fisher, Saturday night?

Answer. He came on board, and I asked him what he'd tow the ship to Boston for; he refused to make any bargain, saying any bargain we might make would not be binding on any parties, either his owners or mine, or any one else. I then stated to him the weather was fine and pleasant, and I did not consider the ship in any danger at all, and I had already sent to Boston for the "Forbes" to come down, and unless he would make a bargain I should refuse to take him; so when he went I asked him if he would not report the ship when he got to Boston; that is about all. I asked him what time he thought he'd get up to Boston, and he said about six or seven o'clock, he thought.

8. Did he not say he would tow you to Boston, but would not make any bargain?

Answer. I believe he did.

9. Did you not tell Captain Fisher that you were expecting the "R. B. Forbes" every moment, or every hour?

Ans. I told him I thought she must be down probably the next morning; I won't swear I did not say every hour or moment, but I think I said, the next morning, if the schooner got up in good season.

10. Have you not since stated as a reason why you did not take assistance from the "City of Boston," on Saturday night, that you had sent to the owners of the "Independence" for the "R. B. Forbes," and that you expected her shortly, or every hour, and that you preferred that assistance should come from the owners, rather than to take any risk yourself in making arrangements for assistance, or anything to that effect?

Answer. I have not.

11. Where is the letter of Mr. Hemmenway, referred to in your answers to the Ninth Direct Interrogatory? (Put de bene esse, if the answer to Ninth Interrogatory is competent.)

Answer. It is in my writing desk, I believe. I will leave the letter with Mr. Hemmenway.

12. When the Bark "Helen" spoke you, where was it, and where was she bound?

Answer. It was Sunday morning, about nine o'clock. She was bound up the bay, steering west-northwest; she came to Boston.

13. What was done by you on Saturday, after the gale.

Answer. We were employed in clearing away the wreck, which cumbered up the wheel a little, and getting some of the spars clear for jury masts.

14. What was done by you on Sunday, before the City of Boston arrived.

Answer. We did not do much of anything Sunday; men had been to work so long that they were beat out; my object was to let them rest a little.

15. State all that was done by you in preparing jury masts, and when it was done?

Answer. We were clearing away the wreck aft, so as to get some small spars out to bend the sails, and getting blocks and lashings ready, and the palls rove. I did not get the shears up; there was a topmast and topsail yard and lower yard on deck; the principal things I wanted was cumbered with the wreck.

16. Why did you cut away your masts, and could you have held on without cutting them away?

Answer. I could not have held on without cutting them away.

17. In whose employment are you now, and have you any, and what interest in the Ship "Independence," or any part of her cargo?

Answer. I am in Mr. Hemenway's employment. I have no

interest in the Ship "Independence," whatever. I have, and had on board, at the time of the gale, about (5000) five thousand dollars of cargo, which came up in her to Boston.

The last answer showing that the witness is interested, Mr. Thaxter, for libellants, objected to the admissibility of his testimony and his further examination.

Additional Interrogatory by Mr. Dehon.

1. Was your interest in the general cargo with the owner, or was it your own private adventure? Whether or not, was it fully insured or otherwise?

Mr. Thaxter objects to the question.

Answer. It was my own private adventure; it was fully insured.

GEO. CHOATE.

United States of America, District of Massachusetts.

I, Edw. G. Loring, a Commissioner in and for the District of Massachusetts, to take affidavits and bail in civil causes depending in the Courts of the United States, appointed by the Circuit Court of the United States for the First Circuit, under the Acts of Congress in such case made and provided: do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the witness, George Choate, is bound on a voyage to sea. I further certify, that a notification signed by me, the commissioner aforesaid, before whom the said deposition was taken, to the adverse party, to be present at the taking of the same, and to put interrogatories if he saw fit, was first made and served on him, allowing time for his attendance after being notified, not less than at the rate of one day, Sundays exclusive, for every twenty miles travel, and he did attend by his counsel, Mr. Thaxter.

I further certify, that the said deposition was by me reduced to writing in the presence of the witness, and that he subscribed the same in my presence, and that I have retained it for the purpose of forwarding it under my own hand to the Court for which it was taken, with this certificate of the reason of its being taken.

I further certify, that I am not of counsel or attorney to either of the parties in the cause in and for which the said deposition is taken, or interested in the event of said cause.

In testimony whereof I have hereto set my hand and seal this day of January, in the year of our Lord one thousand eight hundred and fifty-five.

Comm. fee, $10.

EDW. G. LORING,
Commissioner to take affidavits and bail of the Circuit Court of the U. S. Mass. District.

Answer. I believe he did.

9. Did you not tell Captain Fisher that you were expecting the "R. B. Forbes" every moment, or every hour?

Ans. I told him I thought she must be down probably the next morning; I won't swear I did not say every hour or moment, but I think I said, the next morning, if the schooner got up in good season.

10. Have you not since stated as a reason why you did not take assistance from the "City of Boston," on Saturday night, that you had sent to the owners of the "Independence" for the "R. B. Forbes," and that you expected her shortly, or every hour, and that you preferred that assistance should come from the owners, rather than to take any risk yourself in making arrangements for assistance, or anything to that effect?

Answer. I have not.

11. Where is the letter of Mr. Hemmenway, referred to in your answers to the Ninth Direct Interrogatory? (Put de bene esse, if the answer to Ninth Interrogatory is competent.)

Answer. It is in my writing desk, I believe. I will leave the letter with Mr. Hemmenway.

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Answer. We did not do much of anything Sunday; men had been to work so long that they were beat out; my object was to let them rest a little.

15. State all that was done by you in preparing jury masts, and when it was done?

Answer. We were clearing away the wreck aft, so as to get some small spars out to bend the sails, and getting blocks and lashings ready, and the palls rove. I did not get the shears up; there was a topmast and topsail yard and lower yard on deck; the principal things I wanted was cumbered with the wreck.

16. Why did you cut away your masts, and could you have held on without cutting them away?

Answer. I could not have held on without cutting them away.

17. In whose employment are you now, and have you any, and what interest in the Ship "Independence," or any part of her cargo?

Answer. I am in Mr. Hemenway's employment. I have no

interest in the Ship "Independence," whatever. I have, and had on board, at the time of the gale, about (5000) five thousand dollars of cargo, which came up in her to Boston.

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Mr. Thaxter objects to the question.

Answer. It was my own private adventure; it was fully insured.

GEO. CHOATE.

United States of America, District of Massachusetts.

I, Edw. G. Loring, a Commissioner in and for the District of Massachusetts, to take affidavits and bail in civil causes depending in the Courts of the United States, appointed by the Circuit Court of the United States for the First Circuit, under the Acts of Congress in such case made and provided: do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the witness, George Choate, is bound on a voyage to sea. I further certify, that a notification signed by me, the commissioner aforesaid, before whom the said deposition was taken, to the adverse party, to be present at the taking of the same, and to put interrogatories if he saw fit, was first made and served on him, allowing time for his attendance after being notified, not less than at the rate of one day, Sundays exclusive, for every twenty miles travel, and he did attend by his counsel, Mr. Thaxter.

I further certify, that the said deposition was by me reduced to writing in the presence of the witness, and that he subscribed the same in my presence, and that I have retained it for the purpose of forwarding it under my own hand to the Court for which it was taken, with this certificate of the reason of its being taken.

I further certify, that I am not of counsel or attorney to either of the parties in the cause in and for which the said deposition is taken, or interested in the event of said cause.

In testimony whereof I have hereto set my hand and seal this day of January, in the year of our Lord one thousand eight hundred and fifty-five.

Comm. fee, $10.

EDW. G. LORING,
Commissioner to take affidavits and bail of the Circuit Court of the U. S. Mass. District.

Depositions

Of Jacob K. Lunt, Amos W. Stow, Griffith Morris, Eben S. Smith, John Young, Artemas Paine, William Cushing, Stephen Burrows, Francis Bacon, Richard Baker, Charles Pearson, and Caleb Curtis.

United States of America, District of Masschusetts, *ss.*

On the fourteenth, sixteenth, and seventeenth days of October, A.D. 1854, before me, Elias Merwin, a commissioner duly appointed by the Circuit Court of the United States for the District of Massachusetts, personally appeared, Jacob K. Lunt, Amos W. Stow, Griffith Morris, Eben S. Smith, John Young, Artemas Paine, William Cushing, Stephen Burrows, Francis Bacon, Richard Baker, Charles Pearson, and Caleb Curtis, witnesses for the respondents, in a certain civil cause of admiralty and maritime jurisdiction now pending in the Circuit Court, of the United States for the District of Massachusetts, wherein William B. Fisher is libellant, against the Ship "Independence," her tackle, apparel, and furniture, and cargo.

And now the said Jacob K. Lunt, having been by me first carefully examined, and cautioned and sworn to testify the whole truth, did depose and say, in answer to interrogatories propounded by William Dehon, Esq., proctor of the respondents, as follows:

Oct. 17th, A. D. 1854. And now the said Francis Bacon, having been by me first carefully examined, and cautioned and sworn to testify the whole truth, do depose and say, in answer to interrogatories propounded by William Dehon, Esq., proctor of the respondents, as follows:

Interrogatory First. What is your age, residence, and occupation?

Answer to Interrogatory First. My age is forty-nine years; I reside in Boston, and am President of the China Insurance Company.

Interrogatory Second. Did you have any conversation with Mr. Tobey, in the presence of Mr. Hemmenway and Captain Pearson, relative to the employment of the Steamer "City of Boston," on the 1st of January last, to proceed to the "Independence," at anchor off Race Point? If yea, please state what was said on that occasion.

Answer to Interrogatory Second. I had a conversation with Mr. Tobey, in the presence of Mr. Hemmenway and Captain Pearson. I asked Mr. Tobey if the Steamer "City of Boston" could go down and tow up the Ship "Independence," and what would be the price for doing it. He said he could not name a price, as he did not know what service he would have to perform. I afterwards made a proposition to him as we agreed, Mr. Tobey and myself, in the presence of Mr. Hemmenway and Mr. Pearson, that the steamer should go down for the "Independence," and on the return of the steamer Mr. Tobey should render a bill, which, if not satisfactory, we should refer to disinterested parties to say how much we should pay for the service

performed, also a distinct agreement that those interested in the vessel and cargo of the Ship "Independence," should insure the cargo of the Steamer "City of Boston" while performing this service. I agreed for the parties interested. Mr. Tobey assented to it. He stated in the first place that the ship was insured with the privilege in the policies to assist vessels in distress, and that there was likewise a similar clause in the bills of lading of the cargo of the "City of Boston." In consulting with Mr. Tobey, Mr. Tobey said, and I said likewise, that the policy on the vessel would cover the risk of going out in the vessel again, and we both stated that the cargo having been brought into a place of safety, the clause in the bill of lading might not cover the risking it on this trip. I said that I, for the China Company and the parties interested, will insure the cargo. Mr. Tobey then said, "Very well; I agree that the steamer shall go." Mr. Tobey asked me for a letter to the captain of the Ship "Independence," from Mr. Hemmenway, to give to Captain Baker, who was going down as our agent in the ship. The conversation about the insurance was previous to the agreement that the steamer should go.

Interrogatory Third. Was anything said by Mr. Tobey in regard to any claim which might be made for non-delivery of cargo early on Monday?

Answer to Interrogatory Third. Yes, that was a part that I omitted. He said there might be some claim from the consignees of the cargo, for non-delivery in good season on Monday; and I agreed to be responsible for any claim they might make upon him, or upon the agents of the vessel.

And in answer to cross-interrogatories put de bene esse, not waiving the objection to the deponent on the ground of his interest, propounded by S. Bartlett, Esq., counsel for the libellant, the said deponent further saith:

First Cross-Interrogatory. Did you call Mr. Tobey from church, in the first instance, to obtain the use of the "City of Boston," on that day?

Answer to First Cross-Interrogatory. I waited in the vestibule of the church till he came, thinking I could not get to his house before he had left for church.

Second Cross-Interrogatory. Was it snowing at the time, and how long before that had you heard of the disaster to the ship?

Answer to Second Cross-Interrogatory. It was snowing at the time, a wet snow. I had then heard of the disaster an hour.

Third Cross-Interrogatory. Had you, during that hour, applied for assistance in other quarters, and what?

Answer to Third Cross-Interrogatory. I had not.

Fourth Cross-Interrogatory. Had anybody else, to your knowledge?

Answer to Fourth Cross-Interrogatory. No one, to my knowledge.

Fifth Cross-Interrogatory. Did Mr. Hemmenway or Mr. Pearson apply to the Eastern Steamers, as stated to you by them, or do you know?

Answer to Fifth Cross-Interrogatory. I do not know that they did, and they did not state to me that they did.

Sixth Cross-Interrogatory. Will you revise the facts in your mind, and state whether you did not say to Mr. Tobey that application had been made for the Eastern Steamers, or for any other?

Answer to Sixth Cross-Interrogatory. I did not state to Mr. Tobey that application had been made for any steamer. In walking down from the church to the reading-room with Mr. Tobey, I told him that Captain Pearson and Mr. Hemmenway had gone to the "City of Boston," to inquire of Captain Fisher about the Ship "Independence;" and that they were going to apply for other steamers; but we found them at the Steamer "City of Boston," and they had not made any application for any other steamer. Mr. Tobey stopped at the reading-room to examine the freight list. In the conversation about the insurance, at the T wharf, I asked Mr. Tobey in reference to the value of the cargo. He stated that about $10,000 worth of flour was the largest article, but he couldn't state the value from running his eye over the freight list, and we agreed to insure it, as before stated, for the parties interested, whatever the value might be.

Seventh Cross-Interrogatory. Was all that you have stated in your direct examination in reference to an agreement with Mr. Tobey, the result of a single interview on the T, or was part of it on the way there?

Answer to Seventh Cross-Interrogatory. We separated after the first part of the conversation on the wharf; went out of the hearing of Mr. Tobey, and consulted with Mr. Hemmenway, Pearson, and others, and then returned to Mr. Tobey, and made the proposition.

Eighth Cross-Interrogatory. Will you state, and for word, all that passed between you and Mr. Tobey, after the separation and your returned?

Answer to Eighth Cross-Interrogatory. I stated to Mr. Tobey that we should like to have the boat go down for the "Independence." If he would send in his bill on his return for the service performed, and we thought the sum too large, we would leave it to disinterested parties to say what amount should be paid; we, to insure the cargo of the City of Boston, and I would also pay any claim that the consignees of the cargo should have for the non-delivery of their goods early Monday morning. He answered: "Well, I agree to it;" and asked for a letter to Captain Choate from Mr. Hemmenway, the owner of the Ship "Independence," saying that as Captain Choate had once refused to take the assistance of the steamer, he might do it in this case, without orders.

Ninth Cross-Interrogatory. Before this, had not Mr. Tobey in

terms, distinctly told you that he could make no bargain with you as to compensation for the service, as the character and result of the service he could not know?

Answer to Ninth Cross-Interrogatory. I can only repeat what I said previously, that Mr. Tobey said he couldn't name a price, as he did not know what service the steamer would have to perform.

Tenth Cross-Interrogatory. Will you state how, if at all, your pecuniary interests may be affected by the result of this case?

Answer to Tenth Cross-Interrogatory. I am a member of the China Mutual Insurance Company, and was at the time of the service, and I am a stockholder in the Boylston Insurance Company, both of which offices insure on the ship, and the China about $5000 on the cargo.

Eleventh Cross-Interrogatory. In the concluding part of your answer to the Third Direct Interrogatory, did you mean to say, that you made your personal promise, or that you did it acting for others, as before stated?

Answer to Eleventh Cross-Interrogatory. I mean in all cases where I have stated, that I agreed for the parties interested.

Twelfth Cross-Interrogatory. Will you produce and annex a copy of the by-laws of the China Mutual Insurance Company?

Answer to Twelfth Cross-Interrogatory. I will.

Direct Examination Resumed.

First Direct Interrogatory resumed. In the course of your examination, you undertook to state something regarding the usage of presidents to act in such cases for the parties in interest, and was stopped; please state what you know in that respect.

(The proctor for libellant objects to this interrogatory.)

Answer to First Direct Interrogatory resumed. It is a custom for any one or more of the presidents of the insurance offices here and New York to manage such matters for the benefit of all concerned. We consider ourselves bound in honor to fulfil contracts made in this way by one of our number.

Cross-examination Resumed, *de bene esse*.

First Cross-Cross-Interrogatory. Did you ever make a contract in behalf of others before, or attempt to do so, to insure a vessel and cargo, under circumstances like those of the "City of Boston?" If so, state the instance.

Answer to First Cross-Cross-Interrogatory. I have in many instances made contracts, but I do not recollect one, at this time, where there was a cargo to be insured. (I can recall one instance when I became responsible for fifty thousand dollars for the New York companies without any consultation with them.)

The proctor for libellant objects to the clause in brackets as irresponsive to the question.

FRANCIS BACON.

October 17th, A. D. 1854. And now the said Richard Baker, having been by me first carefully examined, cautioned and sworn to testify the whole truth, did depose and say, and in answer to interrogatories propounded by William Dehon, Esq., proctor of respondents, as follows:

Interrogatory First. What is your age, and how long have you followed the seas as master mariner, and in what voyages?

Answer to Interrogatory First. My age is about sixty; I had followed the seas as master mariner twenty-seven years up to 1848, since when I have been employed by the insurance officers as marine inspector.

Interrogatory Second. Were you employed to go down on Sunday, January 1st, in the Steamer "City of Boston," to bring up the Ship "Independence?" If yea, by whom?

Answer to Interrogatory Second. I was employed by Mr. Hemmenway and Mr. Bacon.

Interrogatory Third. What was the state of the wind, sea, and weather, on your passage to the ship? Whether or not it was of a character to expose the steamer to any peculiar hazard or injury?

Answer to Interrogatory Third. The first part of the passage the wind was very light. When we got down so far as Cohasset Rocks, it began to breeze, and kept breezing gradually till we got down to the ship, and when we arrived there it was about a five or six knot breeze for such vessels as I used to sail in. The sea was a long swell heaving in from the south and east. The steamer went about head to it going down. The weather was rather thick when we first started; it was overcast all the way down. I don't think we saw the sun. It was thick, hazy, but not snowing or raining. I did not consider it of a character to expose the steamer to any peculiar hazard or injury.

Interrogatory Fourth. Whether or not did the steamer pitch in going out to the ship? If yea, dangerously so, or in a way to injure the steamer, or otherwise?

Answer to Interrogatory Fourth. She did pitch, but not dangerously, or in a way to injure the steamer.

Interrogatory Fifth. What was the character of the wind and weather while you lay by waiting to tow the ship? Describe what kind of sea there was, and if dangerous or otherwise.

Answer to Interrogatory Fifth. The wind was somewhere about west. After we had put the pilot on board the ship, there was a fresh squall, which lasted about an hour. The wind then moderated, and the weather became pleasant; passing clouds and starlight. The sea was not dangerous at all; the same swell kept heaving in, but it kept falling gradually.

Interrogatory Sixth. Whether or not, in your judgment, the wind, sea, or weather, during that afternoon and night, were of such a character as to cause apprehension that the steamer would suffer any injury or otherwise? Did Captain Fisher remain on deck while you were waiting to tow the ship, and keep command, or otherwise?

Answer to Interrogatory Sixth. I did not consider there was any wind or sea to endanger the steamer in any way. Captain Fisher was not on deck all the while. Part of the time he was in his berth.

Interrogatory Seventh. Were you on deck when the boat passed to and from the ship, and was there or, not in your judgment, any hazard or danger in that service, or otherwise?

Answer to Interrogatory Seventh. I was on deck when the boat passed to and from the ship. I did not consider the boat in the least danger.

Interrogatory Eighth. What was the wind, sea, and weather, after you took the ship in tow, till you arrived in Boston? How did the "Independence" tow, with ease or difficulty, or how otherwise? Were you and Captain Burroughs on deck all night?

Answer to Interrogatory Eighth. The wind was about west-south-west, a gentle breeze, the weather fine, and the sea quite smooth. The "Independence" towed easy; we towed her four or five knots. Captain Burroughs and myself were on deck all night. We went into the cabin occasionally, but I did not lay down, and I don't think Mr. Burroughs did.

Interrogatory Ninth. How soon after starting did she begin to make progress? Did you give any advice or direction about starting her, when you first took hold?

Answer to Interrogatory Ninth. Soon as she began to straighten her hawser out, she began to go ahead. I requested Captain Fisher to go slow until he got a fair strain on the hawser and the ship going ahead, because it was a small rope to tow a big ship by.

Interrogatory Tenth. If there was a heavy, dangerous sea on, would it or not be safe to tow a vessel of the size of the Independence by an eight inch hawser?

Answer to Interrogatory Tenth. (The proctor for libellant objects to this Interrogatory.) If there is a heavy sea on, I consider the rope small for a heavy sea. I tried to get a larger one before I left, but could not on Sunday. I got one out of a junk store, but it was not long enough to be of any use. I do not think it would be safe with a heavy sea on to tow the "Independence" by an eight inch hawser.

Interrogatory Eleventh. The Ship "Independence," of about 850 tons burthen, having cut away her masts in the gale of 28th and 29th of December last, lay at anchor three days after, on Sunday, 1st January, off Provincetown, in 10 to 15 fathoms of water, Race Point bearing south and about eight miles distant, and Highland Light southeast-by-south ½ south and about twelve miles distant. She had at that time two anchors out, viz., one of 3750 pounds and

one of 3350 pounds; one chain of 1¾ inch and 120 fathoms in length, 45 fathoms of one and 35 of the other chain being out, and the balance ready to pay out if needed; she had also a stream chain of 75 fathoms long and 1¼ inch, and a stream anchor of 1300 pounds, and a kedge of 700 pounds, and a new hawser of eight inches, and all on deck ready for use, and with her master and crew aboard. Was she in that position in any and how much danger?

Answer to Interrogatory Eleventh. I should not consider her in but very little danger riding there.

Interrogatory Twelfth. Taking her ground tackle to have been such as described in the last interrogatory, was it or not lighter or heavier than is usual in vessels of her class?

Answer to Interrogatory Twelfth. It would be heavier: the chains are longer and the anchors are heavier.

Interrogatory Thirteenth. If said ship, as she lay at anchor Sunday, January 1st, with master and crew aboard, and the ground tackle before-mentioned, had fouled her anchors, should you deem it any material danger? How could they be cleared?

Answer to Interrogatory Thirteenth. If she had fouled them, and there had come on a gale of wind, she would be apt to start her anchors. They could be cleared by heaving up her anchors, and seeing if they were clear.

Interrogatory Fourteenth. Whether or not, with a master and crew aboard, there would be any difficulty in heaving up and clearing the anchors, if they were fouled?

Answer to Interrogatory Fourteenth. There would not be any difficulty in heaving them up with a good patent windlass.

Interrogatory Fifteenth. Whether or not, had the "Independence" any light up? and how far do you judge it could be seen the darkest part of that night? Was she in any, and how much, danger of being run down? How long have you known the ground where she lay at anchor?

Answer to Interrogatory Fifteenth. She had a light up—that is, a pitch-pot in the top-gallant forecastle. It could be seen six miles I should think. I should consider she was in very little danger of being run down. I knew the ground where she lay when I was a boy. I used to know it pretty well some forty-five years ago.

And in answer to cross-interrogatories propounded by S. Bartlett, Esq., proctor of the libellant, the said deponent further saith:

First Cross-Interrogatory. Will you look at your answer to the 14th Direct Interrogatory, and say, whether there is ever any difficulty in getting up anchors in a gale of wind? Did you ever know them slipped? Does not the ease with which anchors can be got up depend on the state of the weather? and whether they are foul or not?

(The proctor for respondent objects to this interrogatory.)

Answer to First Cross-Interrogatory. You cannot purchase an anchor in a gale of wind as easy as you can in a calm, in smooth water; but they can be got up. I have known one slipped. I never slipped more than one. The ease with which they can be got up does depend on the state of the weather. You can get them up in calm weather easier than when it is blowing a gale of wind. As to being foul or not, that does not make much difference as to heaving them up.

Second Cross-Interrogatory. Was it possible for the "Independence" to have dragged her anchors in a gale of wind, or not, where she lay, in your judgment? and would they have dragged easier or harder if they were foul?

Answer to Second Cross-Interrogatory. It was possible—not very probable. They would drag easier if they were foul. If there was a turn round the flue, they would drag easier than if they were in the sand.

Third Cross-Interrogatory. Did you go on board the "Independence," or did you remain in the steamer?

Answer to Third Cross-Interrogatory. I remained in the steamer.

Fourth Cross-Interrogatory. Did the steamer, in going to the "Independence," ship any water, or take in any water, over her bows?

Answer to Fifth Cross-Interrogatory. She did, some two or three times: a common occurrence, I suppose, when she is going head to the sea.

Sixth Cross-Interrogatory. Did you ever go to sea in a propeller?

Answer to Sixth Cross-Interrogatory. I never went to sea in a propeller; I have been in a side-wheel boat.

Seventh Cross-Interrogatory. Propellers are trimmed by the bow, are they not? or generally on an even keel, so that they ship seas with great facility over the bows?

Answer to Seventh Cross-Interrogatory. I don't know. I should think they would be trimmed by the stern. I don't know as ever I knew a vessel to draw more water forward than she did aft, at sea. If she was trimmed by the bow, she would ship more water than if trimmed by the stern. I say I never knew a vessel that trimmed by the head, that is, to draw more water forward than she did aft.

RICHARD BAKER.

Deposition of Stephen Burrows.

October 16th, A.D. 1854. And now the said Stephen Burrows, having been by me first carefully examined, and cautioned and sworn to testify the whole truth, did depose and say, in answer to interrogatories propounded by Wm. Dehon, Esq., proctor of the respondents, as follows:

Interrogatory First. What is your age, residence, and occupation, and how long have you followed it?

Answer to Interrogatory First. My age is forty years, residence in Boston. I am a pilot, and have been about six years.

Interrogatory Second. Were you employed to go down on Sunday, January 1, 1854, in the Steamer "City of Boston," to bring up the "Independence?" If yea, by whom? Did you pilot the steamer to her and back to Boston?

Answer to Interrogatory Second. I was employed to go down in the steamboat, but not for me to bring up the "Independence." Mr. Fowler came to me. I did not pilot her to the ship, but I was pilot back.

Interrogatory Third. What was the state of the wind and sea and weather on the passage to the ship? Whether or not was it of a dangerous character, or such as to expose the steamer to any hazard or injury?

Answer to Interrogatory Third. When we started from the wharf, it was about top of high water; it was as nigh a calm as could be. If I recollect, the first or second bells for church in the afternoon were ringing at the time. After we got down to the lighthouse, it began to breeze a little. There was no sea—what I call a sea;—there was a long ground swell heaving in from the eastward. As we got down along perhaps by Cohasset Rocks, it breezed a little more; kept increasing to a six or seven knot breeze, I should think. When we got down to the ship, it breezed a little harder; seemed to have come out of a black cloud that appeared in the westward. It was about a seven or eight knot breeze. It was what we call a top-gallant-sail breeze. A vessel would carry top-gallant-sails all night. There was no sea but the long ground swell heaving in from the eastward, not what I call a sea; some folks, perhaps, might call it a sea. There was no danger at all of exposing the steamer; as to the wind and weather there was nothing to hurt her.

Interrogatory Fourth. Whether or not did the steamer pitch at all in going out to the ship? If yea, whether dangerously so, or in any unusual manner, or in a way to do her mischief?

Answer to Interrogatory Fourth. She pitched once, I believe, so as to take the water up over her top-gallant forecastle; that was in shoal water. That is all the time that I recollect. She pitched generally a little, but no ways to do her any damage. That is often the case, but I don't know as it is with those boats, that a vessel takes in a little water forward.

Interrogatory Fifth. What was the wind and weather while you lay by waiting to take the ship in tow? How was the sea? Describe it, and what caused it.

Answer to Interrogatory Fifth. There was about from a seven to an eight knot breeze. I call it clear weather, but passing clouds. The stars were out. It cleared off as we were going down there.

There wasn't any sea of any consequence, but what an eight knot breeze will generally make. The swell from the eastward, I suppose, was from the late gale.

Interrogatory Sixth. Whether or not was the sea, wind, or weather that night of such a character as to injure the steamer, or cause apprehensions about her? Did Captain Fisher seem to be anxious about her that night, while waiting?

(The proctor of libellant objects to the latter part of this interrogatory.)

Answer to Interrogatory Sixth. They were not. He didn't know (Captain Fisher) but what it might come on to breeze stronger, and he said if it did he should go into Provincetown, and come out the next morning, but he didn't seem to be over-anxious about it, for I heard him say a little while afterwards that he thought he should go lay down.

Interrogatory Seventh. How was the tide that night, while you lay there, and was there any and what current?

Answer to Interrogatory Seventh. If I recollect right, it wasn't a great ways from low water. I don't know how much sooner the tide makes there than here—a little sooner, I suppose; I don't know how much current there is off that distance; I can't say; I don't think there is over two knots.

Interrogatory Eighth. Did you see the boats pass and repass between the steamer and the ship, and did you then or do you now consider there was any hazard or danger in so doing, or was any expressed or entertained to your knowledge?

Answer to Interrogatory Eighth. I see them when they left our steamer with Mr. Fowler, but I didn't see her when she boarded the ship, because she boarded the ship on the starboard side, and we were on the larboard side of the ship; I saw her when she came back; she had a coil of rigging in the boat; I see her go the second time, when we sent the small rope to the ship; I saw her pass and repass then; we didn't consider it dangerous at the time, and I do not now; I do not recollect of any being expressed at the time; I didn't hear any expression of danger at all.

Interrogatory Ninth. How did the ship head when the boats went to her, and from what quarter was the wind?

Answer to Interrogatory Ninth. The ship headed to the southward and westward, I should think, when we sent the line to her; that was the second time. I don't exactly know how the wind was then—it was to the westward, I think; I can't say whether it was to the north or south of westward, but I think to the southward of westward if anything. I know we steered for the Highlands of Marshfield, in order to get into smoother water—to get where it would be smoother, if it came on to blow harder. When the boat first went to the ship, the ship headed to the westward. I don't exactly recollect from what exact point the wind was; I can't state the

exact point; I didn't look at the compass, or set it down on any paper; the wind was westerly.

Interrogatory Tenth. Whether or not while you were by the ship, was there any pilot-boat or yacht near you? If yea, of what size and under what sail?

Answer to Interrogatory Tenth. The little Pilot-boat "Flirt" came down under her three winter sails, such sails as they always go under, whether rough or smooth; she is about forty-two tons, if I recollect right; she ran down on purpose to put a pilot on board the ship.

Interrogatory Eleventh. Did you see any pilot-boats that night towing up any vessels to Boston? If yea, how many?

Answer to Interrogatory Eleventh. When we were going out by the light, two pilot-boats had two schooners in tow; the "Coquette" had one, and the "Jane" had the other.

Interrogatory Twelfth. What was the wind, and sea, and weather, after you took the ship in tow till you arrived at Boston? Whether or not was there anything hazardous or trying to the steamer in the whole service performed by her?

Answer to Interrogatory Twelfth. The weather was good; the wind was blowing a good breeze from the westward. I think when we got up by Cohasset Rocks, it was west-northwest; I recollect vessels going right out with square yards. The sea, we call it smooth—nothing but a little ground swell: the ground swell all the while we waited outside the light: all that we had to wait for was the tide to flow a little. I should say there was not anything hazardous in the service performed by the steamer, if I understand the word. I thought she fetched along very easy. I thought the steamer did very remarkable, the way she came along with her.

Interrogatory Thirteenth. Whether or not a vessel in a breeze or gale and heavy sea which were dangerous, in a dark night, could be safely towed by a hawser of the size of eight inches?

(The proctor of libellant objects to this interrogatory.)

Answer to Interrogatory Thirteenth. It would be according to what the gale was. If it was what I consider a gale of wind, I think she would part a hawser of eight inch size, with a heavy sea agoing.

Interrogatory Fourteenth. The Ship "Independence," of about 850 tons burthen, having cut away her masts in the gale of 28th and 29th December last, lay at anchor three days after, on Sunday 1st January, off Provincetown, in 10 to 15 fathoms of water, Race Point bearing south and about eight miles distant, and Highland Lights southeast by south ½ south and about twelve miles distant; she had at this time two anchors out, viz., one of 3750 pounds, and one of 3350 pounds; one chain of 1¾ inch and 120 fathoms in length, the other of 1⅝ inch and 105 fathoms in length, 45 fathoms of one and 35 fathoms of the other chain being out, and the balance ready to pay out, if needed; she had also a stream chain of 75 fathoms long

and 1¼ inch, and a stream anchor of 1300 pounds, and a kedge of 700 pounds, and a new hawser of eight inches, all on deck, ready for use, and with her master and crew aboard. Whether or not was she, in that position, in any and how great danger?

Answer to Interrogatory Fourteenth. If I was master of the ship, I shouldn't consider myself in any, a great deal of danger, because she had rode through a heavy gale of wind, with only 45 fathoms of chain out, and 35 fathoms out, and having more to pay out, he could veer; he could give her more chain, and she could ride out longer, of course. This is my opinion, with any competent master on board. They often have to anchor where we don't; not on this coast, I mean, but on other coasts.

Interrogatory Fifteenth. Suppose the "Independence," with her master and crew on board, had fouled her anchors as and where she lay, could it or not be remedied; and if so, how, and should you deem it any material danger or otherwise?

Answer to Interrogatory Fifteenth. By heaving up her anchors she could clear them. There is no material danger, because it often happens so in the harbor here. They will swing round their anchors and have to heave them up.

Interrogatory Sixteenth. Had the "Independence" any and what kind of lights while there; at what distance could it be seen in the darkest portion of that night, and is there any and how much danger of a ship, so anchored, with a light thus visible, being run down, where she lay?

Answer to Interrogatory Sixteenth. She had a very large light out. She was burning what we call a pitch kettle. We saw it from half to three quarters of an hour, it might have been an hour, on board the steamboat before we got to her. I think it could have been seen from a vessel as high as the steamboat was five miles; from smaller vessels at least two miles, I should judge. There is no danger, so long as it is clear weather, of her being run down. There would be no danger that night, so long as she had that light burning.

Interrogatory Seventeenth. Whether or not did Captain Fisher say anything in your presence in regard to the agreement made with the steamer to go on this service, or in regard to the terms of the same?

Answer to Interrogatory Seventeenth. I heard Captain Fisher say there was no particular bargain about going after the "Independence." I don't know as I can give it to you in the exact words he said, but he will give it to you as nigh as I can; that they were to make out their bill, and carry it into the owners; they were to charge what they thought would be right, and if the owners thought it was too high, they were to leave it out to disinterested men.

And in answer to Cross-Interrogatories, propounded by D. Thaxter, Esq., proctor of the libellant, the said deponent further saith:

First Cross-Interrogatory. Did the same persons go in the boat the second time, from the steamer to the ship, as went the first time?

Answer to First Cross-Interrogatory. That I can't tell.

Second Cross-Interrogatory. Do you know whether there was any trouble in getting men to man the boat the second time?

Answer to Second Cross-Interrogatory. I didn't hear of any. I don't know of any.

Third Cross-Interrogatory. Did you go on board of the "Independence" before she reached Boston, or did you remain on board the steamer?

Answer to Third Cross-Interrogatory. I remained on board, all the while.

STEPHEN BURROWS.

Deposition of Jacob K. Lunt.

Interrogatory First. What is your age, place of residence, and occupation, and how long have you followed it?

Answer to Interrogatory First. My age is nearly forty-five; I reside in East Boston. I am a pilot, and have been nineteen years; thirteen years in Boston, and six in Newburyport. I was master of a vessel two years.

Interrogatory Second. Have you had any, and what experience of vessels riding at anchor, and on what coast?

Answer to Interrogatory Second. When I was pilot in Newburyport, vessels used to come there in winter-time, and anchor off the bar, and lighten there before they came in. I was on board of one fifteen days there, and rode out three gales of wind. I had the most experience off Newburyport bar. When we went aboard of a ship, we used to calculate to ride out any gale of wind that ever blew.

Interrogatory Third. Do you know the shoal ground where the "Independence" was at anchor on the 1st January, 1854.

Answer to Interrogatory Third. I know pretty near by the telling; I wasn't there when she was at anchor.

Interrogatory Fourth. Suppose the "Independence," of 850 tons burthen, at anchor there, on January 1st, at night, with two anchors, and one chain with 45 fathoms out, and the other with 45 scope, and with the balance of 120 fathoms chain, and of 105, ready to pay out, one chain $1\frac{5}{8}$, and one $1\frac{3}{4}$, one anchor 3750 pounds, and the other 3378 pounds, and one chain with anchors of 75 fathoms, and a new hawser, eight inches in size, on deck ready for use, should you or not consider her in any, and how great danger, at that time?

Answer to Interrogatory Fourth. She would ride there, the year ride, with suitable cables and anchors. No vessel ought to go to sea unless she had them. I should think she would lay there the year round, with the ground tackle mentioned in the Interrogatory.

A vessel that has got 120 fathoms, and chains like them, ought to ride there the year round, sure.

Interrogatory Fifth. Suppose the Propeller "City of Boston" went to said ship, and found her in the position stated, and sent a boat to her in the evening with a pilot, and suppose when the boat went and returned, it was dark, with no moon and stars, the sky being overcast, and there was a heavy sea on from the east, and the wind was blowing from the north-northwest, about an eight knot breeze, and suppose the boat was about 20 minutes or half an hour in returning from the ship to the steamer, and that it was so dark, that at the time, the two vessels could only be distinguished from the boat by their lights, and that this was in midwinter say 1st January last, state what would be the character of such a service, whether dangerous, or otherwise, assuming the boat had four men to man her, and a competent mate in command, now master of a steamer, the boat being one of Francis's metallic life-boats?

Answer to Interrogatory Fifth. I should calculate it would be as safe to go across to that ship as to go across to East Boston to-day.

And in answer to Cross-Interrogatories propounded by D. Thaxter, Esq., proctor for libellant, the said deponent saith:

First Cross-Interrogatory. Is not a vessel lying in tide water with her anchors out ahead liable to swing round her anchors?

Answer to First Cross-Interrogatory. If the wind changes, they are liable to swing around.

Second Cross-Interrogatory. Is she not liable to do so at every change of the tide?

Answer to Second Cross-Interrogatory. According to where they are. In Boston Bay they generally ride head to the wind.

Third Cross-Interrogatory. Where a vessel swings round her anchors, is she not liable to foul them?

Answer to Third Cross-Interrogatory. It is according to how much cable she has out.

Fourth Cross-Interrogatory. When the anchors get foul, is there not great danger that she will drag her anchors?

Answer to Fourth Cross-Interrogatory. There is danger of dragging them if they get foul.

Direct Examination resumed.

First Direct Interrogatory resumed. If the vessel has a mate and crew on board, and other anchors and chains ready for use, may she not be secured from dragging her other anchors?

Answer to First Direct Interrogatory resumed. Yes, sir. As a general thing when I am on board of a ship, if we swing around her anchors, we heave them up to look at them, to see whether they are foul or not, when it gets moderate weather.

Second Direct Interrogatory resumed. Should you consider then,

under those circumstances, there was any danger in fouling the anchors?

Answer to Second Direct Interrogatory resumed. If she swung around with short chain in moderate weather, she would be very apt to foul them, but not with a long cable. There is not any danger in fouling the anchors after heaving them up and looking at them. If she swung around again there is danger, and we must heave them up and look at them. That is the way I used to do, off Newburyport bar; it is one of the hardest places in the world to ride in.

Third Direct Interrogatory resumed. Is there any difficulty in heaving up an anchor in an eight knot breeze, having a complement of men and officers?

Answer to Third Direct Interrogatory resumed. No—no difficulty at all, if it blowing a whole gale of wind, if they have a full crew aboard of the ship.

JACOB K. LUNT.

Deposition of Griffin Morris.

October 14th, A. D. 1854. And now the said Griffin Morris, having been by me first carefully examined, and cautioned and sworn to testify the whole truth, did depose and say, in answer to interrogatories propounded by Wm. Dehon, Esq., proctor of the respondents, as follows:

Interrogatory First. What is your age, residence, and occupation? How long you have followed it, and how long you have followed the seas?

Answer to Interrogatory First. My age is forty-two years. I reside in East Boston, and command the Steam Propeller "R. B. Forbes," and have for about nine years. I have followed the sea about twenty-eight years; five years of the time in pilot-boats,—part of the time as pilot, and part as boat-keeper.

Interrogatory Second. Do you know the ground where the "Independence" lay at anchor, on Sunday, January 1st, 1854?

Answer to Interrogatory Second. I suppose I know somewheres near, according to what I have heard. I know the nature of the ground.

Interrogatory Third. Suppose her to have been about six to eight miles north of Race Point, whether or not did you pass near to the place on Monday, January 2d? If yea, at what hour?

Answer to Interrogatory Third. I passed within about two miles of the Cape. I could have seen the vessel. I passed from twelve to one P.M.

Interrogatory Fourth. Had you any and what vessel in tow at that time, and what was her tonnage. Could you have taken the "Independence" at that time, had she been at anchor there? What is the power of your propeller? Was she or not built expressly for

sea-service of this kind; and would it or not have been difficult or otherwise to have towed both vessels at once?

Answer to Interrogatory Fourth. I had the Bark "Vesta" at that time, of Edgartown. I don't know her tonnage, about two hundred and fifty to three hundred tons; a single-decked vessel. I could have taken the Independence then. I could have towed two or three vessels at the time I came back. My propeller is three hundred and fifty horse-power, and three hundred and thirty-six ton. She was built expressly for sea-service of this kind. There would have been no difficulty in towing both vessels at once. She has two engines, thirty-six inch cylinders, by thirty-two stroke; with a separate condensing engine of twenty-four inch cylinder, with twenty-four inch stroke, which adds to her power.

Interrogatory Fifth. How was the wind, and sea, and weather, Monday, January 2d, 1854, and the night previous?

Answer to Interrogatory Fifth. When I came around the Cape and over the shoals on Monday morning, the wind was from west-northwest, canted around more westerly as I got around the Cape, and was from the west from the Highland Light up. I left Edgartown four o'clock that morning. The weather was clear—a brisk breeze from the west-northwest to west,—no sea, a long undertow, that is all. I arrived here between nine and ten o'clock that night. The night previous, when I was in Edgartown, it was starlight and clear. I should have started, but it was on account of daylight to get across the Nantucket Shoals.

Interrogatory Sixth. Whether or not do you frequently pass and repass, over and about the shoal ground where the "Independence" lay at anchor Sunday night?

Answer to Interrogatory Sixth. I do.

Interrogatory Seventh. Suppose the Ship "Independence," of about 850 tons burthen, having on board the following ground tackle, viz., one anchor weighing 3750 pounds, another weighing 3350 pounds, a stream anchor weighing 1300 pounds, and a kedge weighing 700 pounds, one $1\frac{3}{4}$ inch chain 120 fathoms long, one $1\frac{5}{8}$ inch chain 105 fathoms long; one $1\frac{1}{8}$ inch stream chain 75 fathoms long, and also having a large new hawser, eight inches in size, should meet with a gale, and should first let go her larboard anchor, and cut away her fore-mast, and should afterwards, the gale continuing, let go her starboard anchor, and cut away her main and mizzen-mast, and should bring up in ten to fifteen fathoms of water, in a position where Race Point bore about south and was about eight miles distant, and Highland Light southeast-by-south half south and about twelve miles distant from her, and suppose her to be then riding at anchor in midwinter three days after she cut away her masts, with about 45 fathoms of chain out on one anchor, and about 35 fathoms out on the other, and the balance ready to pay out, if needed, whether or not such a vessel, in such a position, is in a position of any and how great danger?

Answer to Interrogatory Seventh. With regard to the position of that ship, from the fact that she had ridden out as severe a gale as ever I had known on this coast, I suppose she might have ridden forever there, so long as she was tight. I mean the gale of the 29th December, 1853.

Interrogatory Eighth. How long, in your judgment, could she have safely remained there in such weather as there was that Sunday night, and afterwards for some days?

Answer to Interrogatory Eighth. After the gale the vessel might lay with a single anchor then anywhere when I came along. I don't know how long she could remain there. I should think she might remain there as long as her chain was whole and the ship didn't leak. The weather was good after that gale. I towed a good many vessels after that; towed several from the Cape.

Interrogatory Ninth. Suppose the Propeller "City of Boston" went to said ship and found her in the position stated, and sent a boat to her in the evening with a pilot, and suppose when the boat went and returned, it was dark, with no moon and stars, the sky being overcast, and there was a heavy sea on from the east, and the wind was blowing from the north-northwest, about an eight knot breeze, and suppose the boat was about twenty minutes or half an hour in returning from the ship to the steamer, and that it was so dark, that at the time the two vessels could only be distinguished from the boat by their lights, and that this was in midwinter, say 1st January last; state what would be the character of such a service, whether dangerous or otherwise, assuming the boat had four men to man her and a competent mate in command, now master of a steamer, the boat being one of Francis's metallic life-boats?

Answer to Interrogatory Ninth. I couldn't see that there was any risk or danger to a boat, from the fact that I came by there a few hours afterwards; there was no sea then; what one man would call danger, perhaps another wouldn't. I have boarded vessels as a matter of duty, when it was not safe for pilot-boats to be outside of the Light. I should think there would be no danger in going from the steamer to the ship under the circumstances; I say that from the fact that I know what the weather was in the bay.

Interrogatory Tenth. Suppose a ship in the position of the "Independence" were to foul her anchors, would there be any material danger in that circumstance? If not, why not? And what would a master do if he found his anchors were foul, and thought there was danger therefrom?

Answer to Interrogatory Tenth. If the ship was left to herself and going around and fouling her anchors, she might strike adrift; any vessel is liable to do so, riding where there is a strong current. A master finding his anchors foul and thinking danger therefrom would clear them.

Interrogatory Eleventh. If then a vessel had a master in charge

with a crew, would there be any material danger, if the anchors fouled?

Answer to Interrogatory Eleventh. Not at all, I shouldn't think.

Interrogatory Twelfth. Taking the ground tackle to be as stated in the Seventh Interrogatory, how does it compare with vessels of the class of the "Independence?" Whether or not was it lighter or heavier, and what was its character?

Answer to Interrogatory Twelfth. I should think it was heavy for the ship.

Interrogatory Thirteenth. Do you know Captain Choate? What is his character and ability as a ship master?

(The proctor for libellant objects to this Interrogatory.)

Answer to Interrogatory Thirteenth. I know him; he is considered to be a smart, capable man, and good seaman.

And in answer to cross-interrogatories propounded by D. Thaxter, Esq., proctor of the libellant, the said deponent further saith:

First Cross-Interrogatory. If, while the "Independence" was in the position stated, her anchors should foul, and a gale should come up suddenly before her anchors were cleared, would there not be danger of her dragging her anchors, and could they be cleared in a gale?

Answer to First Cross-Interrogatory. If she had spare anchors and cables on board, if she did start, she could let them go. I should suppose if she had wound her chains round and round, she had tackling enough on board of her to ride where she was in a gale. I mean by "wound," foul, or any way.

Second Cross-Interrogatory. Who was on watch on deck of the Forbes, Sunday night?

Answer to Second Cross-Interrogatory. I can't say who was; the crew of the "Forbes" in turn.

Third Cross-Interrogatory. Did you have a watch on deck?

Answer to Third Cross-Interrogatory. I, myself, was on deck at twelve o'clock till four o'clock, when we started.

Fourth Cross-Interrogatory. What time did you go to bed Sunday night?

Answer to Fourth Cross-Interrogatory. I didn't turn in at all, Sunday night; I laid down by the stove. I don't know as I slept any; I was watching the weather.

Fifth Cross-Interrogatory. Did the weather change any where you were, in the night?

Answer to Fifth Cross-Interrogatory. I do not see that it did; the weather was clear and passing clouds.

Sixth Cross-Interrogatory. What rate of speed were you running from the Cape to Boston with the bark on Monday?

Answer to Sixth Cross-Interrogatory. I suppose seven miles an hour, safe.

Seventh Cross-Interrogatory. Did you come directly to Boston with her from the Cape?

Answer to Seventh Cross-Interrogatory. I did.

Eighth Cross-Interrogatory. How long did it take you, at the rate you were running?

Answer to Eighth Cross-Interrogatory. I was off the Cape about one o'clock, and arrived here about nine o'clock. I was detained outside of Boston Light about an hour, by reason of the cable of the vessel getting round the propeller.

Ninth Cross-Interrogatory. Is not the "R. B. Forbes" owned by the Insurance Companies of Boston, and are you not in their employ, and how long have you been so?

Answer to Ninth Cross-Interrogatory. I have been in the "R. B. Forbes" nine years. I suppose she is owned by the Insurance Companies of Boston, and I am employed by them, and have been for the nine years.

Direct Examination resumed.

First Direct Interrogatory resumed. Does the China Office, of which Mr. Francis Bacon is president, own any part of the "Forbes?"

Answer to First Direct Interrogatory resumed. I don't know whether it does or not. I don't know which of the offices own her, but some of them do, of course.

GRIFFITH MORRIS.

Deposition of William Cushing.

October 16th, A. D. 1854. And now the said William Cushing, having been by me first carefully examined, and cautioned and sworn to testify the whole truth, did depose and say, in answer to interrogatories propounded by Wm. Dehon, Esq., proctor of respondents, as follows:

Interrogatory First. What is your age, residence, and occupation, and how long have you followed the same?

Answer to Interrogatory First. My age is fifty years; I am a mariner by profession, and have been ever since 1815. I reside in Medford, Mass.

Interrogatory Second. Did you sail from Boston on December 28th, 1853? If yea, in what vessel, and where bound? Did you encounter a gale on the 28th and 29th December? If yea, describe its character, and how violent it was.

Answer to Interrogatory Second. I sailed from Boston, the 28th December, 1853, bound for Apalachicola, in the Ship "Concordia." On the evening of that day, the gale commenced, and kept increasing during the night, and the following day and night, and on Friday morning, December 30th, the gale broke. It was a very violent gale, a perfect hurricane.

Interrogatory Third. Did you see the "Independence" on the 28th and 29th December, and where last?

Answer to Interrogatory Third. I saw the "Independence" on the evening of 28th December, just at dark. I suppose it was five o'clock in the afternoon. At that time the light on Race Point bore from about south-southeast about five miles, and the "Independence" was astern of me, that is, inside of me, about three or four miles.

Interrogatory Fourth. What was the weather, Friday, the 30th, Saturday, the 31st, and Sunday, the 1st January, and where were you during those three days? How was the sea and wind on Sunday and Sunday night, and the weather, and was there anything in the wind, sea, or weather, of a dangerous character, or otherwise?

Answer to Interrogatory Fourth. On Thursday it was blowing a heavy gale from the eastward, and the wind drawing to the northward and eastward. On Friday, about nine o'clock A.M., the gale was at its height. I then lost all my sails, and at about three P.M., it moderated so much, that I bore away for the south channel. Then the wind had hauled well into the northward and eastward, and the sea began to fall. Saturday, I was running with a stiff breeze from the northward and a smooth sea. Sunday was the same, I believe, as far as I can recollect. I was out clear of the south shoal of Nantucket. On Sunday, and Sunday night, with me, the weather was moderate, and the sea was down, and the wind by this time, had hauled so far into the northward, that it had beat down the old easterly sea with me.

Interrogatory Fifth. Do you know the shoal ground where the "Independence" was at anchor, off Race Point?

Answer to Interrogatory Fifth. I only know that there is such a place there, I never sounded it; I have passed over it; I don't know as I could describe the exact position of it, without referring to a chart. I believe I have made a mistake in the day when the gale broke. It blew the heaviest on Thursday morning, the morning after I left; that was the time I lost my sails, but the gale was very heavy all through Thursday, and Thursday night. At midnight it began to moderate.

Interrogatory Sixth. Supposing the "Independence" anchored on Thursday night, and cut away her masts, having the following ground tackle: one anchor of 3750 pounds, and one of 3350 pounds, one chain $1\frac{3}{4}$ inch, and one of $1\frac{5}{8}$ inch, 45 fathoms of one out, and 35 fathoms of the other out, and the balance ready to pay out, if needed; and that she had a stream chain of 75 fathoms long and $1\frac{1}{4}$ inch, and a spare anchor of 1300 pounds, and a kedge or stream anchor of 700 pounds, and a new hawser of eight inches, all on deck ready for use, and with a master and crew on board, having rode out the gale of Thursday night, whether or not was she in any and how much danger, in your judgment, on Sunday night, while at anchor five to ten miles north of Race Point?

Answer to Interrogatory Sixth. (The proctor for libellant objects to this Interrogatory for substance). I should say that the ship was

in perfect safety, for the wind at that time to the northward, and in an emergency he could have hove up his anchor, and his ship would have drifted in a measure, into Provincetown Bay.

Interrogatory Seventh. Taking her ground tackle to have been such as described in the last interrogatory, was it or not lighter or heavier than is usual in vessels of her class?

Answer to Interrogatory Seventh. I think somewhat heavier.

Interrogatory Eighth. If said ship as she lay at anchor, Sunday January 1st, with master and crew aboard and the ground tackle before mentioned, had fouled her anchors, should you deem it any material danger? How could they be cleared?

(The proctor for libellant objects to this interrogatory for substance.)

Answer to Interrogatory Eighth. I do not consider the ship in any danger. The only thing to be done in such a case is to sight the anchor; that is to heave it up and look at it.

Interrogatory Ninth. Supposing said ship on Sunday night to have been in a position where Race Point bore south and about eight miles distant, and Highland Light southeast-by-south half south and about twelve miles distant, and that she had a light up which could be seen a half a mile, was she in any and how much danger of being run down?

Answer to Interrogatory Ninth. I don't think she was in any danger of being run down, for most vessels that come in round the Cape are generally on the lookout, and those going out are generally on the lookout. The bay is generally full of small craft, and in fact we are always on the lookout.

And in answer to Cross-Interrogatories propounded by D. Thaxter, Esq., proctor of the libellant, the said deponent further saith:

First Cross-Interrogatory. In what direction was the wind Friday, Saturday, and Sunday, and how hard was it blowing?

Answer to First Cross-Interrogatory. The wind on Friday was southeast, from southeast to east, and blowing a heavy gale. The wind Friday afternoon, I suppose, had got into the northeast. I cannot recollect as to the very hour. On Saturday the wind was northwest with me; I was then in the south channel, probably off Chatham. It was then blowing a stiff breeze, not a gale of wind by any means, smooth. Sunday was the same, as near as I can recollect. Sunday noon I judged myself up by the south shoal of Nantucket.

Second Cross-Interrogatory. Have you ever been in the employ of Mr. Hemmenway, the claimant in this case? If so, when, for how long a time, and when were you in his employment last, and who do you sail for now?

Answer to Second Cross-Interrogatory. I never sailed for Mr. Hemmenway, and was never in his employ, and I don't suppose I ever had five minutes' conversation with him in my life. I am now in the employ of Goddard & Pritchard, of Boston.

Direct Examination resumed.

First Direct Interrogatory resumed. You have stated in one of your answers that the gale broke Thursday night and moderated on Friday, and in another that it blew a gale on Friday. Please state which is correct?

(The proctor of libellant objects to this Interrogatory for substance.)

Answer to First Direct Interrogatory resumed. It is correct on Thursday; it blew the hardest about nine o'clock Thursday morning, and it was then I lost my sails; but the gale was very heavy throughout the day. The wind was from the eastward Friday, not steady, hauling gradually around. It was blowing a gale then, but not a heavy gale.

Cross-examination resumed.

First Cross-Cross-Interrogatory. When did you first know that your testimony was to be taken in this case?

Answer to First Cross-Cross-Interrogatory. Last Friday evening.

Second Cross-Cross-Interrogatory. How was the weather Sunday morning, January 1st, clear or otherwise?

Answer to Second Cross-Cross-Interrogatory. Where I was, it was hazy, clear over head, but hazy on the water.

Third Cross-Cross-Interrogatory. How had it been during the Saturday night previous?

Answer to Third Cross-Cross-Interrogatory. It had been a moderate breeze from the northward, and rather pleasant than otherwise.

WM. CUSHING.

Deposition of Caleb Curtis.

October 17th, A. D. 1854. And now, the said Caleb Curtis, having been by me first carefully examined, and cautioned and sworn to testify the whole truth, did depose and say, in answer to interrogatories propounded by William Dehon, Esq., proctor of the respondents, as follows:

Interrogatory First. What is your age and occupation at the present time? Have you ever followed the seas? and how long, and up to what period?

Answer to Interrogatory First. My age is sixty-two. I am President of the Neptune Insurance Company. I followed the seas for twenty odd years. I left off about 1826.

Interrogatory Second. The Ship Independence, of about 850 tons burthen, having cut away her masts in the gale of 28th and 29th December last, lay at anchor three days; on Sunday, January 1st, off Provincetown, in 10 to 15 fathoms of water, Race Point bearing south and about 8 miles distant, and Highland Light southeast-by-south ½ south and about 12 miles distant. She had, at that time,

two anchors out, viz., one of 3750 pounds, and one of 3350 pounds; one chain of $1\frac{3}{4}$ inch and 120 fathoms in length, the other of $1\frac{5}{8}$ inch and 105 fathoms in length; 45 fathoms of one and 35 of the other chain being out, and the balance ready to pay out, if needed. She had also a stream chain, of 75 fathoms long and $1\frac{1}{4}$ inch, and a stream anchor of 1300 pounds, and a kedge of 700 pounds, and a new hawser of 8 inches, all on deck, ready for use, and with her master and crew aboard. Whether, or not, was she in that position in any and how much danger?

Answer to Interrogatory Second. I shouldn't imagine she was in much danger. I don't know of another ship with such sufficient ground tackle.

Interrogatory Third. If said ship, as she lay at anchor Sunday, 1st January, with master and crew aboard, and the ground tackle before-mentioned, had fouled her anchors, should you deem it any material danger? How could they be cleared?

Answer to Interrogatory Third. If she had fouled her anchors, I don't think that would have added much to the danger, for they could have hove up one and cleared it.

Interrogatory Fourth. Suppose the Propeller "City of Boston" went to the ship, where she lay at anchor, and sent a boat to her with a pilot; and suppose, when the boat went and returned, it was dark, with no moon, the sky being overcast, and with a long, rolling swell from the east, and an eight-knot breeze from the northwest; and, suppose the boat to have been twenty minutes, or half an hour, in returning from the ship to the steamer, and that it was so dark that the two vessels could not be distinguished from the boat, except by their lights, and that this was on 1st January last, at midnight; what would be the character of the service, whether dangerous or otherwise? If dangerous, how much so? assuming the boat to have been one of Francis's metallic boats, and to have been manned by four men, and a competent mate in command, now master of a steamer?

Answer to Interrogatory Fourth. I don't think there would be any material danger in a boat passing at that time, particularly a life-boat.

Interrogatory Fifth. Supposing said ship, where she lay, to have had a light up, which could be seen at the distance of two miles, was there any, and how much, danger of her being run down?

Answer to Interrogatory Fifth. Very little.

Interrogatory Sixth. Whether or not is it usual here in cases of disaster for the President of one of the Companies interested to act for the others without specific authority?

Answer to Interrogatory Sixth. (The proctor for libellant objects to this interrogatory.) It is very often done.

Interrogatory Seventh. Whether or not, should you, if called on to act in such a case, agree to insure, or assume the risk of a vessel

and cargo which might be sent to the assistance of that which met the disaster, in behalf of the companies interested?

(The proctor of libellant objects to this interrogatory.)

Answer to Interrogatory Seventh. If I had a large interest in the vessel that had met the disaster, I should do so without hesitation.

And in answer to Cross-Interrogatories propounded by S. Bartlett, Esq., counsel of libellant, the said deponent further saith:

First Cross-Interrogatory. Will you revise your answer to the Second Direct Interrogatory and tell me, as a means of determining your estimate of the risk, for what premium, you as President of the Neptune Insurance Co., would have insured the "Independence" and her cargo in her then position? Should you have been willing to have insured her and her cargo at any rate?

Answer to First Cross-Interrogatory. I don't know; it would depend on how I felt. I think I would have insured her for five per cent. I should have calculated to make money out. I don't think there was much danger after that gale of wind with such cables and anchors as she had.

Second Cross-Interrogatory. Whether, in your judgment, your directors would have consented to your insuring her, at any rate?

(The proctor of respondents objects to this interrogatory.)

Answer to Second Cross-Interrogatory. I don't think my directors would have objected to it if I had done it. I don't mean to say that I would have been willing to have taken the whole ship and cargo; but a small amount, say $10,000.

Third Cross-Interrogatory. Did you ever write a ship under similar circumstances during the whole time you have been President of the Office?

Answer to Third Cross-Interrogatory. I never had an application.

Fourth Cross-Interrogatory. Under the circumstances described in the Fourth Direct Interrogatory, was the danger greater in boarding on the weather side, or not?

Answer to Fourth Cross-Interrogatory. I should think there was more danger in boarding on the weather side than on the lee side.

Direct Examination resumed.

First Direct Interrogatory resumed. What would you have insured the Steamer "City of Boston" and cargo for, to go down and bring up the "Independence" from where she lay on Sunday, January 1st, 1854?

Answer to First Direct Interrogatory resumed. I should think from half to one per cent. It depends on the weather. As it was that day, I think I should have been willing to have insured her for three-fourths of one per cent.

CALEB CURTIS.

Deposition of Charles Pearson.

October 17, A. D. 1854. And now the said Charles Pearson, having been by me first carefully examined, and cautioned and sworn, did depose and say, in answer to interrogatories propounded by Wm. Dehon, Esq., proctor of the respondents, as follows:

Interrogatory First. What is your age? Are you a marine inspector of this city? How long have you followed the seas, and up to what time?

Answer to Interrogatory First. My age is sixty-five years. I am a marine inspector of this city. I followed the seas from 1800 to 1839. I was in command of a ship from 1812 to 1839.

Interrogatory Second. Do you know the Ship "Independence?" what was her value with her masts cut away on January 1st last?

Answer to Interrogatory Second. I know the Ship "Independence." I suppose she might have been worth about fifty dollars a ton with her masts cut away.

Interrogatory Third. The Ship "Independence," of about 850 tons burthen, having cut away her masts in the gale of 28th and 29th December last, lay at anchor three days after; on Sunday, 1st January, off Provincetown, in 10 to 15 fathoms of water, "Race Point" bearing south and about eight miles distant; and Highland Light southeast by south ½ south and about 12 miles distant; she had at that time two anchors out, viz., one of 3750 pounds, and one of 3350 pounds; one chain of 1⅞ inch and 120 fathoms in length, the other of 1⅝ inch and 105 fathoms in length, 45 fathoms of one and 35 of the other chain being out, and the balance ready to pay out, if needed; she had also a stream chain of 75 fathoms long, and 1¼ inch, and a stream anchor of 1300 pounds, and a kedge of 700 pounds, and a new hawser of 8 inches, all on deck and ready for use, and with her master and crew aboard; whether or not was she, in that position, in any and how much danger?

Answer to Interrogatory Third. Very little danger, if any, I should say.

Interrogatory Fourth. If said ship, as she lay at anchor dismasted on Sunday, 1st January, with master and crew aboard, and the ground tackle before mentioned, had fouled her anchors, should you deem it any material danger? How could they be cleared?

Answer to Interrogatory Fourth. If she had fouled her anchors there would be more danger than if she had not fouled them; if the ship had fouled her anchors, and it came on to blow hard, there might be some danger of going adrift. They could be cleared by sighting the anchors—heaving them up and looking at them.

Interrogatory Fifth. Were you present at T wharf, at any conversation between Mr. Hemenway, Mr. Bacon, and Mr. Tobey? If yea, please state it, confining it to what was stated by Mr. Tobey, or in his presence and hearing, by either of the others?

Answer to Interrogatory Fifth. I was present; after the parties got together, Mr. Tobey and the other gentlemen at T wharf, Mr. Bacon, I think it was, asked Mr. Tobey if the steamer could go down and tow up the Ship "Independence" from where she was. There was some demur on the part of Mr. Tobey, on account of the insurance of the cargo of the steamer, and the steamer. Mr. Bacon said he would insure the cargo of that steamer and that vessel, so far that Mr. Tobey was satisfied, and said Let the vessel go; now I believe I can give you the very words. Mr. Bacon said, Mr. Tobey, what will you let the steamer go for? Mr. Tobey said he couldn't name a price, or wouldn't name a price, for he didn't know the nature or extent of the service, or something implying that, at any rate. I think that was the very words. Shortly, a few moments after that, Mr. Bacon told Mr. Tobey, he wished the boat should go down for the Ship "Independence," and as he could not name a price, when his bill was rendered for services, if it was too much, in his opinion, he would refer it to impartial persons. Mr. Tobey said, Well! and the immediate order was given to prepare the boat for going. That is all the conversation that I recollect.

And in answer to Cross-Interrogatories propounded by S. Bartlett, Esq., counsel of the libellant, the said deponent further saith:

First Cross-Interrogatory. Did you hear Mr. Tobey say anything about the value of the cargo of the steamer, what he estimated it at?

Answer to First Cross-Interrogatory. I don't recollect that I did.

Second Cross-Interrogatory. How is the life-boat moored off Minot's Ledge?

Answer to Second Cross-Interrogatory. I don't know. I suppose she is moored with shackles. To keep her anchors from fouling, they have a span, with a swivel hook in the centre of the span, to which the chain is bent, and as she swings round and round the swivel, she can't foul her anchors.

CHAS. PEARSON.

Deposition of Artemas Paine.

October 14th, A. D. 1854. And now the said Artemas Paine, having been by me first carefully examined, and cautioned and sworn to testify the whole truth, did depose and say, in answer to interrogatories propounded by Wm Dehon, Esq., proctor of the respondents, as follows:

Interrogatory First. What is your age, and occupation, and how long have you followed the sea?

Answer to Interrogatory First. My age is thirty-nine years. I have followed the seas twenty-five years, fishing and coasting.

Interrogatory Second. Have you been accustomed to lay at anchor on any, and what coast; for what time, and in what weather?

Answer to Interrogatory Second. I have been at anchor on a great many coasts. The most exposed place I was ever at anchor, is Prince Edward's Island. I have been at anchor on the Great Bank, three seasons, three or four months at a time, in all weather, moderate and gales of wind.

Interrogatory Third. Did you see the "Independence," while at anchor, after the gale of December 28th, 1853. If yea, when first, and on what days?

Answer to Interrogatory Third. I don't know as I saw her myself. The place was pointed out to me. I couldn't see her from where I was on the coast, and on the deck of a vessel, at work. I was at the back of the cape which has been spoken of.

Interrogatory Fourth. What was the weather, wind, and sea on Friday, December 30th, Saturday, December 31st, and Sunday and Monday, January 1st and 2d, 1854; and where were you to observe it?

Answer to Interrogatory Fourth. The weather, Friday, was generally good; the first part of the day there was a fresh breeze from the northwest; the latter part a moderate breeze from the westward. The sea was comparatively smooth—quite smooth. Saturday it was good weather all day, and the sea was smooth. Sunday the weather had a stormy appearance in the morning, there was some snow and rain until ten or eleven A. M., the wind then hauled to the northward, it moderated and cleared. At two P. M. it was nearly calm. From that, till dark, the wind was from northwest, light breeze, weather good. The sea was smooth in the afternoon. Some little sea on in the morning, but not so much but a boat could have gone off at any time. I knew nothing further till Monday morning. The weather was good; quite a fresh breeze west-northwest, but not near a whole sailed breeze. The sea was smooth all day. I was on the beach, between Race Point and Highland Light, at work on the Brig Wm. L. Rogers. The brig was ashore on the beach; she came ashore on Thursday.

Interrogatory Fifth. Was there anything on Monday morning to indicate there had been dangerous weather, or a heavy sea Sunday night?

Answer to Interrogatory Fifth. Nothing, to my observation.

Interrogatory Sixth. Whether or not the "Independence," in your judgment, could have been towed from her anchorage to Provincetown or Boston, on any, and which of the days named, by sailing vessels?

(The proctor for libellant objects to this Interrogatory.)

Answer to Interrogatory Sixth. I think she could have been taken to Provincetown Friday, Saturday, or Sunday. Monday, I don't think she could, on account of the wind being westward, not but what the weather was good enough. She could have been taken to Boston on Sunday, by sailing vessels.

Interrogatory Seventh. Whether or not, in your judgment, was the "Independence," with two anchors out, one of 3750 pounds and one of 3350 pounds, one chain with forty-five fathoms out and one with 35, and the balance ready to pay out, one chain being 1¾ inch and 120 fathoms long, and the other 1⅝, 105 fathoms long, with a stream chain of 1¼ inch, 75 fathoms long, and a stream anchor of 1300 pounds, and a kedge of 700 pounds, and a new hawser of eight inches, all on deck ready for use, as she lay on the night of 1st January, dismasted, having been three days at anchor, after a severe gale, in any and how much danger, and was she likely to drag her anchors or otherwise?

Answer to Interrogatory Seventh. I shouldn't suppose she would be in any uncommon danger, any more than the common dangers of the seas. I don't know hardly what would be suitable tackle for such a ship. If the tackle was of suitable size, I shouldn't consider there was any danger.

And in answer to cross-interrogatories propounded by D. Thaxter, Esq., proctor of the libellant, the said deponent further saith:

First Cross-Interrogatory. During Friday, Saturday, and Sunday, were you employed on board the same ship with John Young and E. S. Smith, and was that on the back of the Cape, about three miles from Provincetown, and were you at work there during all of those days?

Answer to First Cross-Interrogatory. Yes.

Second Cross-Interrogatory. Were you employed by Mr. Smith?

Answer to Second Cross-Interrogatory. I was.

Direct Examination resumed.

First Direct Interrogatory resumed. Did you go up aloft, or on the sand hills, for the purpose of seeing the "Independence?"

Answer to First Direct Interrogatory resumed. I did not.

ARTEMAS PAINE.

Deposition of John Young.

October 14th, A. D. 1854. And now the said John Young, having been first carefully examined, and cautioned and sworn to testify the whole truth, did depose and say, in answer to interrogatories propounded by Wm. Dehon, Esq., proctor of respondents, as follows:

Interrogatory First. What is your age and occupation, and how long have you followed the sea?

Answer to Interrogatory First. My age is forty-three years. I have been fishing most part of the time. I have followed the sea twenty-five years; fishing most of the time.

Interrogatory Second. Have you been accustomed to lay at anchor on any and what coasts, for what time and in what weather?

Answer to Interrogatory Second. I have been accustomed to lay at anchor on the Grand Bank from two to four months in the season, in most all kinds of weather, calms and gales of wind.

Interrogatory Third. Did you see the Independence while at anchor after the gale of December 28, 1853? If yea, when first, and on what days?

Answer to Interrogatory Third. I saw the ship that was said to be the Independence, on Friday and Saturday, and I think I saw her on Saturday afternoon, after it cleared up.

Interrogatory Fourth. Describe the wind and weather on those days, and what was the character of the sea then, and where were you, and how occupied at the time, and how near the Independence?

Answer to Interrogatory Fourth. I was on the back of the Cape, about eight or ten miles from the ship, at work on the Wm. L. Rogers, discharging her cargo. Friday the sea was not over rough, the weather was good and clear. In the evening the wind moderated and hauled to the westward; it was overcast some.

Saturday the weather was good and moderate. Sunday morning at five o'clock it snowed and rained a little, and the wind out to the southeast. The wind still beckoned to the eastward into the north-northeast; it rained some till about nine or ten o'clock, and then died off calm. You could see in the morning about two miles. From nine, say to about two, it died off calm. Then the wind sprung up unto the westward and cleared up; it was overcast, but not so you couldn't see. The sea was not over rough; so little sea that a boat went to a ship from the shore, lying about three quarters of a mile off. It was rather a smooth sea, not but what a boat could go about anywhere. It was a pilot went off in this boat. Sunday after two it was quite a moderate breeze, not over a three-knot breeze or four at the most till dark.

Interrogatory Fifth. How was the wind and weather from Sunday night to Monday noon?

Answer to Interrogatory Fifth. I don't know anything about the wind Sunday night after eight or nine o'clock till the next morning. From Monday morning till noon it wasn't over fresh; rather a moderate breeze for winter; the sea was smooth, quite.

Interrogatory Sixth. Whether or not could the "Independence," in your judgment, have been towed from her anchorage to Provincetown or Boston, on any and which of the days named, by sailing vessels?

Answer to Interrogatory Sixth. It could have been taken either of those days to Provincetown. I think so. She could have been towed to Boston on Sunday without any more than common trouble. We took a ship in the month of July, filled with water, up to Race Point, in a much fresher breeze than either of those days. She was between 400 or 500 tons.

Interrogatory Seventh. Whether or not, in your judgment, was the

Independence, with two anchors out, one of 3750 pounds and one of 3350 pounds, one chain with 45 fathoms out and one with 35, and the balance ready to pay out, one chain being $1\frac{3}{4}$ inch and 120 fathoms long, and the other $1\frac{5}{8}$, 105 fathoms long, with a stream chain of $1\frac{1}{4}$ inch, 75 fathoms long, and a stream anchor of 1300 pounds, and a kedge of 700 pounds, and a new hawser of eight inches, all on deck ready for use, as she lay on the night of 1st January, dismasted and having been three days at anchor after a severe gale, in any and how much danger, and was she likely to drag her anchors or otherwise?

Answer to Interrogatory Seventh. I know she wouldn't have dragged her anchors any time in January. She was safe enough as to riding. There was no wind from northwest to south-southeast, not but what that ship could ride out; she could ride out any wind we ever have there.

Interrogatory Eighth. Whether or not was it, in your judgment, a service of any and how much danger to send a Francis metallic life-boat, manned by four men and a mate in command, who had been four years a mate and now commands a steamer, from the Steamer "City of Boston" to the said ship and back, on the night of the 1st January?

(The proctor of libellants objects to this interrogatory for form.)

Answer to Interrogatory Eighth. I shouldn't suppose there was much danger in going, so far as I know about the weather in the night time, when I left the beach. I didn't know anything about the weather during the night, but I should suppose there was no danger, not more than common danger; not more than I should have been willing to have gone.

Interrogatory Ninth. Was there anything on Monday morning to indicate there had been dangerous weather or a heavy sea Sunday night?

Answer to Interrogatory Ninth. Nothing at all. I found the sea Monday morning about the same that it was on Sunday afternoon.

Interrogatory Tenth. Suppose the "Independence," with her master and crew on board, had fouled her anchors at where she lay, could it or not be remedied, and if so, how, and should you deem it any material danger or otherwise?

Answer to Interrogatory Tenth. I shouldn't think she was in much danger, even if she fouled her anchors, with a master and a crew on board, for they could heave them up at any time. There was no danger of the ship drifting ashore in less than four hours.

And in answer to Cross-Interrogatories propounded by D. Thaxter, Esq., proctor of the libellant, the said deponent further saith:

First Cross-Interrogatory. Whether or not were you in the employ of any of the Insurance Companies in Boston, or their agent, E. S. Smith, at that time, in working on wrecks?

Answer to First Cross-Interrogatory. I was employed by Mr. Eben S. Smith.

JOHN YOUNG.

Deposition of Eben S. Smith.

October 14th, 1854. And now the said Eben S. Smith, having been by me first carefully examined, and cautioned and sworn to testify the whole truth, did depose and say, in answer to interrogatories propounded by Wm. Dehon, Esq., proctor of respondents, as follows:

Interrogatory First. What is your age and place of residence, and what experience have you had in aiding vessels ashore, and otherwise?

Answer to Interrogatory First. My age is forty-eight years. I reside in Provincetown, and for the last twenty years I have had a great deal of experience in saving property and getting off vessels, and taking care of them, both on the water and on the land, in perilous positions.

Interrogatory Second. Whether or not have you acted for any, and what length of time, as agent for underwriters, in cases of disaster near Provincetown?

Answer to Interrogatory Second. I have for the last ten or twelve years, more or less, and do now, whenever they send me instructions.

Interrogatory Third. Did you see the Independence while at anchor? And when first did you send any notice of the fact to her owners, and how, and how soon?

Answer to Interrogatory Third. I saw her on Friday morning, the day after the gale. The gale abated Thursday night. I sent a notice on Friday, previous to ascertaining what vessel it was; about Friday noon, I sent a special messenger. I learned on Saturday morning, at seven o'clock, who she was, and I then sent a messenger again across the bay to Plymouth.

Interrogatory Fourth. What was the weather, wind, and sea, at the place where the Independence lay at anchor on Sunday and Monday, January 1st and 2d, 1854? Describe what kind of a sea there was.

Answer to Interrogatory Fourth. I suppose I was about eight miles from the Independence, on the back of the Cape. I cannot describe what she had; I can describe what we had. Provincetown is about three miles southwest from where I was. The vessel was in sight quite early Sunday morning. It snowed and rained at intervals, but probably not more than a five-knot breeze. It cleared up with us, about nine o'clock A.M. From eleven until two P.M. it was a perfect calm; then the wind came in about west-northwest, I should think, very moderate. In the evening it blew a little fresher in about the same direction; it might possibly have hauled a little to the westward. I should think it blew about a seven-knot breeze at about nine o'clock in the evening. At twelve to one o'clock, at high water, it was more moderate and quite clear. I was getting off a

vessel that night, and was up; that is why I know. It was what we call a clear night. I went to bed about ten, and think I got up about twelve. At daylight on Monday morning the wind was about the same, and perfectly clear, and there was very little sea on shore; there was what we call a ground swell, but not a heavy sea, by any means. In fact, there was a man and two boys who went from the back of the Cape to the Ship Havre, who had her colors flying for a pilot, I suppose in need of assistance. They went to her; he was a pilot. There was so little wind, that she drifted in, and was in danger of coming on to the bars; there was not wind enough to stay the ship. The pilot dropped the anchor under foot, got his head off shore, hove his anchor up, and sailed off, and got into Cape Ann the next morning. Monday, it continued moderate with a smooth sea all day.

Interrogatory Fifth. Do you know and are you familiar with the shoal ground where the Independence lay at anchor?

Answer to Interrogatory Fifth. I am not familiar with it, only from representation.

Interrogatory Sixth. Whether or not, in your judgment, could said Ship Independence have been towed from her anchorage to Provincetown or Boston, on Friday, Saturday, Sunday, and Monday, by sailing vessels? Why did you not go to her, or send assistance on either of those days? Had you any applications from any competent persons to perform that service?

Answer to Interrogatory Sixth. She could have been towed to Provincetown very readily on Friday or Saturday. On Sunday morning the wind was to the eastward, and she could have been towed to Boston best. On Monday the wind was west-northwest, and she could have been towed best into Provincetown. I did not go to her, or send assistance on those days, because I considered her perfectly safe, and I had more than I could attend to nearer to me, that was in imminent danger. I had applications from competent persons to perform that service; two I can call to mind: one came to me two or three times, but I considered her perfectly safe, and I knew we should have to take steam after all, if I took her into Provincetown. Kilborn W. Freeman was one, and the George Osborne was the vessel of the other. They had been out wrecking, and they had towed in four or five dismasted vessels into Provincetown.

EBEN S. SMITH.

Deposition of Amos W. Stow.

October 14th, A. D. 1854. And now the said Amos W. Stow, having been by me first carefully examined, and cautioned and sworn to testify the whole truth, did depose and say, in answer to interrogatories propounded by Wm. Dehon, Esq., proctor of respondents, as follows:

Interrogatory First. What is your age, and occupation? How long have you followed the sea?

Answer to Interrogatory First. My age is forty-five years. I am in the towing business, and have been for about six years. I never followed the seas.

Interrogatory Second. Whether or not do you command the steam towboat J. Taylor, and how is she employed?

Answer to Interrogatory Second. I do command her. She is employed in towing ships.

Interrogatory Third. How was she employed on the Friday and Saturday previous to 1st January, 1854, and how did she perform the service; and whether or not was the sea heavier on Friday and Saturday than on Sunday, or otherwise?

Answer to Interrogatory Third. On Friday I went down to Cohasset Rock, and brought the Brig Times, that was dismasted, and brought her to Boston. She was covered with ice and snow, and laying between Cohasset Rocks. Saturday morning, I went down off Plymouth Light, and which bore about southwest and six miles from us, to the Bark Le Roy, which was dismasted, and brought her to Boston. She was dismasted in the gale of the Thursday previous. The sea wasn't a very rough sea; it was dull snowy kind of weather, squalls by spells. I could not judge how it compared off there Sunday, because I wasn't there; but in the bay it didn't seem to differ a great deal.

Interrogatory Fourth. Where was your steamboat on Sunday, and was she in good order and condition to have towed up the Independence that day from her anchorage, or otherwise? Whether or not your boat had sufficient power, and was fit for the service or otherwise?

Answer to Interrogatory Fourth. I understood the Independence to lay to the northward of Cape Race, and a little westerly, eight or ten miles from Race Point. My boat was lying at Union Wharf on Sunday. I consider my boat was in good order and condition to have towed up the Independence, as I went out early Monday morning to tow up a ship; I think my boat had sufficient power, and was fit for that service. I once went to Newport with her, and brought the Ship Silas Leonard to Boston. The ship was in a very bad condition, laying on her broadside. It was as ugly a job, I suppose, as you could wish for. I have been several times to Newburyport, and brought ships with her to Boston. As far as that goes, I think she is competent to do that kind of work.

Interrogatory Fifth. Whether or not you would have been willing to tow the Independence, had you been applied to for that service?

Answer to Interrogatory Fifth. I think I should have gone to her if I had had sufficient inducement. I did not care about going to her on my own account.

And in answer to cross-interrogatories, propounded by D. Thaxter, Esq., proctor of the libellant, the said deponent further saith:

First Cross-Interrogatory. You have said in your last answer you did not care to go her on your account, why?

Answer to First Cross-Interrogatory. I had already had a dispute with the other two vessels, and I was not going again without knowing if I could get anything if I didn't find her. My reason for not going was, that I didn't care to go down there and run the risk of not finding the ship, and come back without having anything. It was snowing, and there is difficulty in finding the ship when it is snowing, and I didn't want to go down at my own risk.

Second Cross-Interrogatory. Whether or not did you know, or was notice given you Sunday morning, that the Independence was off the Cape dismasted?

Answer to Second Cross-Interrogatory. Yes, sir; one of the Boston pilots called at my house and told me; he called from nine to eleven o'clock in the forenoon, I should think; I cannot fix the hour exactly.

Third Cross-Interrogatory. What was the weather and sea when you towed the disabled ship from Newport, as you have testified?

Answer to Third Cross-Interrogatory. It was moderate, fine weather most of the time, except its being foggy. It was what we would call a smooth sea.

Fourth Cross-Interrogatory. What is the tonnage of your steamer, and is she not a side-wheel boat, and are not her guards low in the water?

Answer to Fourth Cross-Interrogatory. She is about two hundred thirty tons, two hundred horse power, a side-wheel boat; we have two cylinders, thirty inches diameter, eight feet stroke, and carrying thirty pounds of steam. Her guards are lower than some other boats, and no lower than some. I have had at least three of the New York boats lie alongside of mine. Their largest boat, the Titan, was about six inches higher than mine. The depth of the boat is eight feet; she draws six feet and a half when she has coal enough in to last ten or twelve days. She draws that draft about five feet forward. Her guards then will be from twelve to eighteen inches from the water. It depends upon how much coal and water we have in her. Her guards project the widest place eight or nine feet, each side of the boat, so as to protect the wheels.

Fifth Cross-Interrogatory. What was the tonnage of the brig you towed Sunday, and what of the bark you towed Saturday?

Answer to Fifth Cross-Interrogatory. The brig was about two hundred to two hundred and fifty tons, and the bark I should think was over three hundred tons.

Direct Examination resumed.

First Direct Interrogatory resumed. Had you any trouble with your guards or otherwise on Friday and Saturday, while towing the dismasted ships you speak of?

Answer to First Direct Interrogatory resumed. No; none at all.

I towed a ship from Newburyport, in a very much worse time, immediately after a gale of wind, in the month of December, in the tail of a northeast snow-storm. Her tonnage, I should think, was sixteen hundred tons. It was so rough the day before that they did not dare come over the bar with the ship, because there was danger of her striking on the bar. The gale was three days before, and I went down one day after the gale, and laid one day at Newburyport. I went down in the night; we went down outside of Thatcher's Island.

Second Direct Interrogatory resumed. How late did it snow Sunday, January 1st, and how soon did you know that the City of Boston was going to tow the Independence?

Answer to Second Direct Interrogatory resumed. I should think it was snowing as late as ten or eleven o'clock A.M. I then came over to my boat; on coming on to my own boat, I learned almost immediately that they were getting coal ready for the "City of Boston" to go.

Cross-examination resumed.

First Cross-Cross-Interrogatory. How was the wind when you towed the large ship from Newburyport? Was the ship in ballast, or loaded?

Answer to First Cross-Cross-Interrogatory. She was in ballast. The wind was from north to east until we got to Thatcher's Island. It was a hazy kind of a day, with the wind changing about. There was a six or eight knot breeze. After we got to Thatcher's Island, it changed to southwest.

AMOS W. STOW.

Correspondence.

Hemenway's letter, sent by "City of Boston," January 1st, 1854.

Dear Sir: Captain Baker goes down in the "City of Boston," as agent for underwriters and myself, and you can do what you and he think best. Get the ship up here, or into Provincetown, as appears best, and get both anchors and chains, if you can do so without risk.

Yours,

A. HEMENWAY.

BOSTON, January 1st, 1854.

If the "Franklin" has got hold of you, it is all well.

"B." "E. MERWIN,"
Commissioner.

Tobey to Hemmenway.

BOSTON, January 19th, 1854.

Augustus Hemmenway, Esq. Present.

Dear Sir: Previous to our interview yesterday, it was my purpose to present to you a claim of a *definite sum*, for services rendered by

the steamer, "City of Boston," to the Ship Independence and cargo, when in distress, on 1st and 2d instant, believing it to be clearly a case of salvage; but, in my interview with you and Mr. Bacon, you having refused to consider it a salvage claim, and thus rejected the first principle on which the claim is founded, I conclude that it would be of no avail for me to state my opinion as to the amount of compensation which the owners of the Steamer "City of Boston" are entitled to receive; I therefore now claim, for said service of said steamer, proper salvage, and am willing to submit the question, of what that amount should be, to competent arbitrators, if such can be mutually agreed on; or to pursue the course which you proposed to me yesterday, viz.: "to place the whole case at once in the United States Court for decision." If no satisfactory arrangement can be made before the Independence is ready for sea, it will, of course, become necessary for me to institute a libel process, as the only alternative left to protect the interests which I represent.

The misapprehensions which have already arisen, in our recent personal interview, admonish me, that it is very desirable that our communications on this subject should be in writing.

I have therefore to request, that you will favor me with a written reply to this at your earliest convenience.

Respectfully yours,
EDWARD S. TOBEY.

For the owners of Steamship "City of Boston," and the parties interested.

Hemenway to Tobey.

BOSTON, 20th January, 1854.

Edward S. Tobey, Esq. Present.

Dear Sir:—Yours of the 19th this moment at hand. The Steamer City of Boston was engaged by Mr. Bacon and myself to go down for the Independence under the express stipulation, that after her return your *bill* was to be sent in, and if we considered it too high, it should be left out to the decision of disinterested persons as to what the amount should be.

The evidence as to the above is clear, distinct, and indisputable.

We sent Captain Baker in her as our agent. Should you have hinted at any idea of your considering it a salvage matter, or even that you should charge an exorbitant rate for the towage, we should not have employed the steamer.

You will therefore please send in your bill as agreed.

Respectfully, your obedient servant,
A. HEMENWAY.

Tobey to Hemenway.

BOSTON, January 21st, 1854.

A. Hemenway, Esq. Present.

Dear Sir:—Your letter of yesterday has been received, and I

sincerely regret to discover by it the entire misapprehension which appears to exist in your mind in reference to the affair of the "City of Boston" (Steamer).

I beg to state decidedly and unqualifiedly that a stipulation to furnish a *bill* was not made by me. I am certain that neither that language nor any of equivalent import was used by me or by any person in conversation with me. What took place was as follows:

On Sunday, on 1st January (instant), in the vestibule of the Mt. Vernon Church, Mr. Bacon applied to me for the Steamer "City of Boston," to go for the Ship Independence. I then learned from him, for the first time, that that ship had met with a disaster, and that the Steamer "City of Boston" had arrived here. At his request I immediately went to the T wharf, where he soon met me, and there after I had consented that the steamer might go, Mr. Bacon asked me the question, "What are you going to charge us?" To this I *promptly* and *emphatically* replied, "Gentlemen, I can make no bargain with you." A *slight* pause followed, when Mr. Bacon observed, "Why, I suppose Mr. Tobey does not know *now* what service he has to render, and therefore does not know what it is worth." I replied, "That is the case," and then repeated what Mr. Bacon said and as now quoted. This it seems to me you cannot fail to remember, for thereupon Mr. Bacon added, "Well, then we must consult," and immediately went aside (out of my hearing), and with you and others entered into consultation.

Soon afterwards Mr. Bacon returned to me and said, "Well, Mr. Tobey, you must let her go, and if you ask or claim too much, it must be referred to disinterested parties as men to decide." To this remark I replied in the simple monosyllable "Well." No more and no less was said on that point by either party, and I proceeded immediately to give the necessary orders to despatch the steamer. As to what was said I am perfectly clear in my memory, for such important consequences were involved that I charged my memory with it at the time, and immediately afterwards. I had from the beginning resolved to make no bargain, as I did not then know the circumstances, and was unwilling to do anything which might preclude those whom I represented or myself from making any claim which when the circumstances and facts could be made known should seem to be legal and just. I supposed that whether it would turn out a salvage claim or not would be a matter of future determination. On deliberately examining that point since, I am *clearly* of opinion that it is a salvage case, and therefore cannot consent to waive that point preliminary to a settlement, as you seem to demand in your letter. I think you will admit it is a fair inference of mine that gentlemen of the known experience and intelligence of Mr. Bacon, Mr. Balch, and yourself, with two agents of the underwriters (Captain Pearson and Captain Baker), may have considered the point of salvage, even if it was not the subject of discussion at the time you

were in consultation. But whether it was or not, it seems very strange that you had not *distinctly* stated to me at the time that you should not consider it a salvage service, if you so intended and also mean that I should so understand it. Why did you not do so, and then give me an opportunity either of refusing to risk the steamer, or of proposing the terms on which she should go? I had distinctly and emphatically stated to you that I could make no bargain, which it seems to me must have suggested to you at least the *probability* of a salvage service and claim. But I forbear further argument. The statement of facts I have herein made is as truthful as it is possible for a human mind to make it, and so distinctly and carefully marked in my memory, that no testimony whatever, however respectable, can ever convince me to the contrary. I desire nothing but equity, and in any unpleasant effort to obtain it for those whom I represent, and for myself, I cannot shrink from the responsibility, however liberal I might be disposed, if my own interest alone were involved. I still hope that after a careful review of these facts as stated, you will be willing to accept the proposition of arbitration on the basis contained in my letter to you of 19th inst., to which I now refer you.

I remain respectfully, yours,

EDWARD S. TOBEY,

In behalf of owners Steamship City of Boston and others.

Hemenway to Tobey.

BOSTON, 23d January, 1854.

Edward S. Tobey, Esq. Present.

Dear Sir: Yours of the 21st only reached me this day, and in answer I can only reproduce mine of the 20th. In the nineteenth line of second page, you say that Mr. Bacon, myself, and others went out of your hearing to consult. That consultation began with my saying, that I did not think worth while to send the "City of Boston" at all; that the "Independence" had 120 fathoms $1\frac{3}{4}$ inch chain, and 105 fathoms large $1\frac{5}{8}$, with enormously heavy anchors, also an extra heavy stream anchor and chain (this was on deck and not under at all); also, that the "Forbes" must be soon if not actually towing her up, as she could not fail to see her, as she came round the Cape from Edgartown. Mr. Bacon stated that he had found the mate of one of the eastern steamers, but that the captain lived at some distance. I mentioned the "John Taylor," as always doing my work (she was lying near Lincoln's Wharf, where the "City of Boston" coaled, and the captain came to me there for employment). Mr. Bacon then said that he wished to make a distinct proposition to you, which he did, and which was assented to by you, as stated in my letter of 20th. Salvage was not alluded to by any of us, and certainly never thought of by *me*. If, as in the fifteenth line of third page you state, it was on *your mind, it was your duty*

to have mentioned it—it would, at all events, have saved all this correspondence, and your steamer the trip to the Cape. I have this day seen a person from the Cape, who states that he saw from near Provincetown, the "Independence" at anchor, and that from noon Sunday to the hour the "Forbes" passed the Cape (which he also saw) it was good weather, and that the "Independence" could have been in no possible danger. Respectfully, ob't serv't,

A. HEMENWAY.

The "Independence" will sail on Saturday.

Tobey to Hemenway.

BOSTON, Jan. 23, 1854.

A. Hemenway, Esq. Present.

Dear Sir: Since my letter of 21st instant, which I trust you have received, I have concluded to state to you that I will accept the sum of ten thousand dollars, for the service rendered by the Steamship "City of Boston" to your Ship "Independence" and cargo.

I state this sum in the spirit of a *compromise*, and for the purpose of an amicable adjustment, and not as the amount which I shall claim, if compelled to go before arbitrators or any other tribunal.

This offer is made, on the express condition, if it is not accepted, it is not to be used or made known in any way, *directly* or *indirectly* to arbitrators, or other tribunal before which the case may come.

I am confident if you will deliberately weigh all the circumstances of this case and the principle involved (on my side as well as yours), or take the opinion of those most competent to advise on such a subject, you will come to the conclusion that the offer which I now make is a very reasonable one. Respectfully yours,

EDWARD S. TOBEY,

For owners Steamship "City of Boston," and the parties interested.

P. S. An early reply is desirable.

Hemenway to Tobey.

BOSTON, 24th January, 1854.

Edward S. Tobey, Esq. Present.

Dear Sir: Yours of the 23d at hand, and am happy to see, on your part, the first real step toward a settlement, but even without a consultation (Mr. Bacon is in New York), I think I may venture to say we cannot pay the sum you ask, and I may also say, that we cannot treat the case as one of salvage. To constitute salvage, risk must have been taken by the salvor, and the thing saved must have been in danger. In the eye of the law as well as of common sense, if nothing was in danger nothing could have been saved. Even your steamer was not at risk, being insured, and by your requirement Mr. Bacon and myself insured for you, all the cargo on board of her, and on that Sunday, agreed to stand between you and any claim that the

owners of the cargo might make for want of a prompt delivery early on Monday morning. By conversation with Cape people and from Provincetown I find that the Independence was at anchor on or near what they call the Shod Ground (12 to 15 fathoms), which is about 5 to 8 miles from N. to N. W. from the northern part of the Cape. If after she cut away her masts, she could ride out in perfect safety, the terrific gale and hurricane she did (her hull was and is as tight as a cup), surely with her enormous chains and anchors she could have remained there in equal safety to this day, how much more so for the few hours that intervened between the time the City of Boston took her in tow, and the time when the Forbes passed over the same spot in broad daylight, on her way from Edgartown to Boston.

The question of *compensation* (the true one between us), I am willing to meet in the most liberal spirit, and will now agree to name twelve merchants, if possible, who have never heard the affair, from whom you may take three, you may name six only; from whom I will take three, and they shall decide upon the amount due the City of Boston as compensation, and at all events, on my part, I will ask them to do it in the most generous and liberal manner.

Respectfully, your obt. servt.,

A. HEMENWAY.

Tobey to Hemenway.

BOSTON, January 25th, 1854.

A. Hemenway, Esq. Present.

Dear Sir: I have received yours of the 24th instant, and learn from it that you are not prepared, in Mr. Bacon's absence, to pay the sum which I offered to take. In making that offer, which I regarded as a very moderate one, I did not depend alone on my own opinion, but others, conversant with the facts and the principles (and whose opinions I think you would respect), *fully* concurred with me. As to the question of salvage named in your letter, we so entirely differ, that it cannot be useful for us to discuss it. I have taken much pains to inform myself on that point, and as stated in my first letter believe it *clearly* a case of salvage.

Therefore I cannot concede my position on that question, nor do I ask you to yield yours preliminary to an arbitration. If arbitrators can be mutually agreed on, as hereafter suggested, I am willing to submit to their decision the whole case, including the question of salvage and what amount should be paid to the owners of the steamer.

This, however, on the condition already stated in a former letter, viz., that the sum which I have named in compromise shall not be made known to either arbitrators or any other tribunal, *directly* or *indirectly*.

I cannot admit that your Ship Independence and cargo was not in

great danger, nor that you and Mr. Bacon agreed to protect me from the claim of the consignees of the cargo for delay in delivery, although you did verbally agree to insure the cargo after I had stated from merely looking at the freight list, my estimate of its value at twenty-five thousand or thirty thousand dollars.

Whether my steamer was protected by her policy of insurance in such a case and under such *peculiar* circumstances, and what the situation of your vessel was, are questions to be determined by others (unless you see fit to accept my offer).

You propose six arbitrators, *all merchants;* I should think three or four would be sufficient, two of whom at least should be legal gentlemen, as we differ widely on the principles involved. Besides, I am apprehensive that it will be difficult to find many merchants who are conversant with such a subject, who have not already heard of this case.

I am willing that we should each name three or four gentlemen (as before suggested) for mutual consideration, either of us being entirely at liberty to object to any, or all of those proposed by the other.

I remain respectfully, yours,
EDWARD S. TOBEY,
For owners Steamer City of Boston, and the parties interested.

Hemenway to Tobey.

Boston, 25th January, 1854.

Edward S. Tobey, Esq. Present.

Dear Sir: Yours of this date at hand. You say that you learn from mine of the 24th, that I was not prepared, in Mr. Bacon's absence, to pay the sum you asked. Now, my dear sir, you did not learn anything of the kind; what you did learn was, that even without *consultation*, I refused to pay the sum you asked; also, that I refused to treat the case as one of salvage. My letter can speak for itself. You admit that Mr. Bacon and myself insured for you the whole cargo of the City of Boston, but you say that you can not admit that we agreed to protect you from the claim of the consignees of the cargo, for delay in delivery; both stipulations were clear and explicit, both on our part and yours.

It only now remains for me again to ask you to send in your bill for the towage up from her anchorage, near Cape Cod, of the Ship Independence, by the Steamer City of Boston.

Respectfully, your obt. servt.,
A. HEMENWAY.

Tobey to Hemenway.

Boston, January 27th, 1854.

A. Hemenway, Esq. Present.

Dear Sir: I have received yours of 25th, and readily accept the

explanation contained in the first seven lines, of the meaning you intended to convey in the first four lines of your letter of 24th inst.

I think that you have stated your refusal to pay in *rather* more positive terms in the latter, than in the former case. This, however, it seems to me cannot be of much importance.

If there was any ambiguity in my letter of 25th, it was not *intended*, nor even thought of by me, till the receipt of yours of 25th.

As I have proposed to you a compromise in my letter of 23d January, which has been declined, and arbitration in my letter of 19th, and again, in my letter of 25th instant, proposed the basis on which I thought it should be conducted, and you having passed over the subject of arbitration without even an *allusion* in your letter of 25th instant, and you also having, in said letter, in conclusion, reasserted your position in the manner which precludes every principle on which my claim is founded, no alternative remains to me but to institute a libel process against the Ship Independence and cargo, in order to protect the interest which I represent. This I do in an amicable spirit and as it appears to me a necessary measure. I have deferred it as long as I regarded it safe, in the unavailing hope of some other mode of adjustment.

Having been informed in your letter of 23d, that the "Independence will sail on Saturday" (to-morrow), I have directed a libel process to issue to-day, and at the same time requested my counsel to conduct the form with the least possible inconvenience to you, consistent with the rights of the libellant.

I remain respectfully, yours,

E. S. TOBEY,

For owners Steamer "City of Boston," and others interested.

This cause was entered at the May Term, A. D. 1854, of this Court, and thence was continued from term to term to this present term (May, A. D. 1855), when the same came on to be heard, and thereupon, upon consideration thereof, it was ordered, adjudged and decreed by the Court as follows, namely: That there be allowed to the said libellant and to the owners, officers, and crew of the said Steamer "City of Boston," the sum of seven thousand five hundred dollars, as and for salvage in the premises, against the said Ship "Independence," her tackle, apparel, and furniture, and all and singular the goods, wares, and merchandise on board the said ship. The said sum of seven thousand five hundred dollars to be paid by the said Ship "Independence," her tackle, apparel, and furniture, and all and singular the goods, wares, and merchandise on board said ship, into the registry of this Court. And it is further ordered, adjudged, and decreed, that the said salvage shall be apportioned, distributed, and paid over as follows, namely:

To William B. Fisher, master of said steamer, four hundred dollars, ... $400

To L. S. Ames, the first mate thereof, two hundred dollars,	$200
To Enoch Willet, the pilot of said steamer, one hundred and forty dollars,	140
To E. W. Randall, the clerk thereof, who went twice in the small boat, two hundred dollars,	200
To William Penn, engineer of said steamer, two hundred dollars,	200
To Patrick Dolan, fireman, forty dollars,	40
To Owen Smith, fireman, forty dollars,	40
To Robert Johnson, fireman, forty dollars,	40
To David Trainer, fireman, forty dollars,	40
To Josiah S. Hatch, a seaman, who went twice in the clerk's boat (fifty dollars), he being the only one whose name is known to the Court,	50
To Edward Forfine, a seaman on board said steamer, thirty dollars,	30
To John Lee, also a seaman,	30
To Benjamin Cutler,	30
To Augustus A. Coffin,	30
To John Lynch,	30
To William Brown,	30
To Frank Silves,	30
To John Wran,	30
To William Clark,	30
Said several persons having served on board said steamer.	
To William Kiner, coal-passer, thirty dollars,	30
To John Hammet, coal-passer, thirty dollars,	30
To John Jordan, coal-passer, thirty dollars,	30
To Hamilton Berry, cook, thirty dollars,	30
	$1740

Amounting altogether to the sum of seventeen hundred and forty dollars.

And that all the residue and remainder of the said sum of seven thousand five hundred dollars, be paid over and belong to the owners of the said Steamer "City of Boston." And that said libellant do further recover against the said Ship "Independence," her tackle, apparel, and furniture, and the goods, wares, and merchandise on board of her, the further sum of four hundred and ten dollars forty-two cents, for his costs in this case. And that the said costs and salvage be paid into the registry of this Court forthwith.

Whereupon the said Augustus Hemenway then and there claimed an appeal to the Supreme Court of the United States, to be holden at Washington, on the first Monday of December next. And gave good and sufficient security to prosecute his appeal with effect, and to answer all damages and costs, if he shall fail to make good his

appeal, which security was approved by the Court, and the said appeal allowed accordingly.

United States of America. Massachusetts District, *ss.*

I, Henry W. Fuller, Clerk of the Circuit Court of the United States for the First Circuit Massachusetts District, do hereby certify, that the foregoing is a true copy of the record and of all proceedings in the cause of William B. Fisher *v.* The Ship Independence.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the said Court, at [SEAL.] Boston, in said District, this twenty-second day of November, in the year of our Lord one thousand eight hundred and fifty-five, and the Independence of the United States of America the eightieth.

H. W. FULLER,
Clerk Circuit Court U. S. Massachusetts District.

Deposition of Francis Bacon.

Filed 25th Jan. 1856.

And now the said Francis Bacon, having been by me first carefully examined, and cautioned and sworn, deposes and says, in answer to the several Direct and Cross-Interrogatories annexed to the foregoing commission, as follows:

Answer to First. In answer to the First Interrogatory, he saith:

My age is fifty years. My residence is Boston, Massachusetts, and I am President of the China Mutual Insurance Company.

Answer to Second. In answer to the Second Interrogatory, he saith:

I applied to Mr. Tobey on that day. I went to Mt. Vernon M. E. Church about ten o'clock in the morning, and waited for Mr. Tobey to come there. He soon came, and I said to him, The Steamer City of Boston has arrived, and reports boarding the Ship Independence, at anchor off Provincetown, dismasted; and asked him if the Steamer City of Boston could go down for her. He stated that he would go with me to the steamer, and consult with the captain. On the way down, he said the policies on the City of Boston contained a clause, allowing her to tow and assist vessels in distress, and there was likewise a similar clause in the bills of lading used by these steamers. We agreed in opinion that the policies on the steamer would cover the risk of her going to the Independence, but doubted whether the cargo could be risked, it having been brought into a port of safety. We stopped at the reading-room, where Mr. Tobey examined the copy of the manifest of the cargo of the City of Boston. We separated there.

Answer to Third. In answer to the Third Interrogatory, he saith:

In about a quarter of an hour afterwards I went to the T wharf, in company with Mr. Balch, President of the Boylston Fire and Marine Insurance Company, where I met Mr. Tobey, Mr. Hemmenway, Mr. Pearson, the Marine Inspector for the Boston Insurance Companies, and Captain Fisher, alongside of the Steamer City of Boston. We had some conversation with Mr. Tobey in regard to the employment of the steamer. Mr. Hemmenway stated, that the underwriters' Steamer, R. B. Forbes, was coming round from the Vineyard, with a small vessel in tow, and that she would come directly in the track of the Ship Independence, and might take her in tow before the City of Boston arrived there, and might also take her into Provincetown or bring her to Boston. I again proposed to Mr. Tobey for his boat to go to the ship, and asked him to name a price for the service. He declined naming any sum, saying, he did not know what service the steamer would have to perform. I then separated a short distance from Mr. Tobey, and consulted with Mr. Hemmenway, owner of the Ship Independence, with Mr. Balch and Captain Pearson; after which I proposed to Mr. Tobey that the "City of Boston" should go down for the Independence, if he would agree to send in a bill on the return of the steamer, and, if we thought it too large, it should be referred to disinterested parties to say what we should pay, I agreeing, for the parties interested, to insure the cargo of the City of Boston until her return. Mr. Tobey said, there might be some difficulty with the consignees of the cargo of the steamer, if it was not delivered in good season on Monday morning, and I also agreed that we would be responsible for any claims on that account. Mr. Tobey said, Well, I agree that the boat shall go. During this conversation the crew were employed in discharging the deck load of the steamer.

Answer to Fourth. In answer to the Fourth Interrogatory, he saith:

All that was said was, as already stated in my preceding answer, that Mr. Tobey said there might be some difficulty with the consignees of the cargo, if it was not delivered in good season on Monday morning, and I agreed that we would be responsible for any claims made on that account.

Answer to Fifth. In answer to the Fifth Interrogatory he saith:

I had a conversation with Mr. Tobey in regard to the insurance on the way to the reading-room, and we agreed in opinion that the policies on the steamer would cover the risk of her going out again; and after consultation with Mr. Balch and with Mr. Hemmenway, I agreed with Mr. Tobey that the underwriters and others interested in the Independence should insure the cargo of the boat.

Answer to Sixth. In answer to the Sixth Interrogatory he saith:

During the conversation about the hire of the steamer, Mr.

Hemmenway said that the "R. B. Forbes" was coming round from the Vineyard to Boston, with a small vessel in tow, and that she would pass in the track of the Independence, and might take that ship in tow before the City of Boston got to her, and take her into Provincetown or bring her to Boston.

Answer to Seventh. In answer to the Seventh Interrogatory he saith:

Mr. Tobey asked for a letter to Capt. Choate of the Ship Independence, saying, that as Capt. Choate had once declined the service of the steamer, he might refuse again. Mr. Hemmenway wrote a letter to Capt. Choate, and it was sent by Capt. Baker, who went down in the steamer as our agent.

Answer to Eighth. In answer to the Eighth Interrogatory he saith:

I am not now, having sold my stock in the Boylston Fire and Marine Insurance Company, on the first day of the present month. I am a member of the China Mutual Insurance Company. Both said companies had insurance on the Ship Independence and her cargo. The China Company had to the amount of twenty thousand dollars on the ship, and five thousand three hundred dollars on the cargo; the Boylston Company had twenty thousand dollars on the ship, and thirty-one hundred dollars on the cargo.

Answer to the Ninth. In answer to the Ninth Interrogatory he saith:

I have taken, and now hold such indemnity in cash; three thousand dollars from the China Mutual Insurance Company, and one thousand dollars from the Boylston Fire and Marine Insurance Company.

Answer to Tenth. In answer to the Tenth Interrogatory he saith:

I can swear that it is so, and also that it is sufficient to cover the whole liability of said companies.

Cross-Examination.

Answer to First Cross. In answer to the First Cross-Interrogatory he saith:

I did, in October, 1854.

Answer to Second Cross. In answer to the Second Cross-Interrogatory he saith:

I have read said copy, and think it is correct.

Answer to Third Cross. In answer to the Third Cross-Interrogatory he saith:

The indemnity is in money paid to me by said companies, and in pursuance of votes passed by each. I produce a copy of said votes, and my receipts for the money. The same are marked A. and B. by the commissioner, and are annexed. These comprise all the writings connected with said indemnity.

Answer to Fourth Cross. In answer to the Fourth Cross-Interrogatory he saith:

There was and is no understanding, agreement, or expectation in

reference to the said indemnity, except what is expressed in my receipts for the same, copies of which are annexed.

Answer to Fifth Cross. In answer to the Fifth Cross-Interrogatory he saith:

I have sold my stock in the Boylston Fire and Marine Insurance Company to my brother, Daniel C. Bacon, at its par value, for the purpose of qualifying myself as a witness in this case, with no agreement or promise to receive it back again at any time; but I have no doubt, from my knowledge of him, that he will resell me the same should I request it.

FRANCIS BACON.

United States of America, District of Massachusetts, *ss.*

Be it remembered that on the seventh day of December, A. D. eighteen hundred and fifty-five, by virtue of the annexed commission to me directed, I caused to appear before me at my office, in the City of Boston, the said Francis Bacon, Esquire, the deponent named in the said commission, and the said Bacon was by me first carefully examined, and cautioned and sworn, and he was thereupon examined by me upon the several direct and cross-interrogatories annexed to said commission, in their order, and the evidence by him given was by me reduced to writing, and was thereafter subscribed by the witness in my presence. And I do certify that in the taking of said deposition all the directions contained in said commission were strictly complied with. In witness whereof, I have hereunto set my hand the day and year aforesaid.

E. MERWIN,
U. S. Commissioner.

Witness's fees, $ 1 50
Commission fee, 12 00

A.

At the regular Monthly Meeting of the Directors of the Boylston Fire and Marine Insurance Company, held on Tuesday, November 13th, 1855, the following votes were unanimously passed:

Voted: That the sum of one thousand dollars be paid unto Francis Bacon, by the Boylston Fire and Marine Insurance Company, to indemnify the said Bacon fully, against all and every liability, loss, damage, or expense, to which he may be subject as a stockholder, or policy-holder, in said Company, or otherwise, by reason of any decree which has been, or may be made and rendered upon a libel for salvage, filed by Fisher, against the Ship "Independence," in the District Court of the United States, for the District of Massachusetts, and now pending on an appeal taken from the Decree of the Circuit Court in the District aforesaid, to the Supreme Court of the United States, and by reason of any and all expenses incurred thereon.

Voted: That the Secretary take from Mr. Bacon a receipt for said money, as such indemnity, and a promise in writing to return such part of said sum of one thousand dollars as may prove not to be required for the purpose of such indemnity, when ultimately ascertained.

A true copy of the record.

HORACE W. BARRY,
Secretary.

Boston, November 27, 1855.

Received of the Boylston Fire and Marine Insurance Company, one thousand dollars to indemnify me against any liability, loss, damage or expense, mentioned or referred to in the foregoing votes, and I hereby promise and agree with said Company to return such part of said sum as shall not be requisite for that purpose, when the same, and the extent of my liability, loss, damage and expense, shall be ultimately ascertained.

(Signed) FRANCIS BACON.

A true copy of receipt.

HORACE W. BARRY.
Secretary.

B.

At the regular monthly meeting of the Directors of the China Mutual Insurance Company, held on Monday, November 5th, 1855, the following votes were unanimously passed:

Voted, That the sum of three thousand dollars be paid unto Francis Bacon, by the China Mutual Insurance Company, to indemnify the said Bacon fully against all and every liability, loss, damage, or expense, to which he may be subject as a stockholder, subscriber, or member of said Company, or as a policy-holder, or otherwise, by reason of any decree which has been, or may be made and rendered, upon a libel for salvage, filed by Fisher, against the Ship Independence, in the District Court of the United States, for the District of Massachusetts, and now pending on an Appeal taken from the Decree of the Circuit Court, in the District aforesaid, to the Supreme Court of the United States, and by reason of any and all expenses incurred thereon.

Voted, That the Secretary take from Mr. Bacon a receipt for said money, as such indemnity, and a promise in writing, to return such part of said sum of three thousand dollars, as may prove not to be required for the purpose of such indemnity when ultimately ascertained. A true copy.

Attest, GEO. L. DEBLOIS.
Secretary.

Boston, November 27th, 1855. Received of the China Mutual Insurance Company, three thousand dollars, to indemnify me against all liability, loss, damage, or expense, mentioned or referred to in

the foregoing votes; and I hereby promise and agree with said Company, to return such part of said sum as shall not be requisite for that purpose, when the same, and the extent of my liability, loss, damage, and expense, shall be ultimately ascertained.

(Signed) FRANCIS BACON.

A true copy.

Attest, GEO. L. DEBLOIS.
Secretary.

United States of America. The Circuit Court of the United States, within and for the Massachusetts District.

Massachusetts District, *ss:* To Elias Merwin, of Boston, in said District, Esquire, U. S. Commissioner.

Know ye, That reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower you to take the answers [to the interrogatories hereunto annexed] of Francis Bacon, Esq., a witness to be examined on behalf of the appellant, and to be used in a certain cause now pending in the Supreme Court of the United States, wherein Augustus Hemmenway is Appellant v. Fisher, Appellee.

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses, as aforesaid, to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your presence. And the same, so taken and subscribed, to return, together with this Commission and your doings herein enclosed, sealed and directed to the Supreme Court aforesaid, holden at Washington, as soon as the same may be executed.

N. B.—You shall not, except by consent of the parties in writing, permit either party to attend at the taking of the deposition, either himself, or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponent whilst giving his deposition in answer to the interrogatories annexed to this commission. And you shall take such deposition in a place separate and apart from all other persons, and permit no person to be present during such examination, except the deponent and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk, to assist you in reducing the deposition to writing. And you shall put the several interrogatories and cross-interrogatories to the deponent in their order, and take the answer of the deponent to each, fully and clearly. ☞Depositions to be taken on paper of like size with this commission.

In testimony whereof, we have caused the seal of the said Circuit Court to be hereunto affixed.

Witness, the Honorable Roger B. Taney, at Boston, this twenty-eighth day of November, in the year of our Lord, one thousand eight hundred and fifty-five.

H. W. FULLER.
Clerk.

United States of America, Massachusetts District.

"INDEPENDENCE,"
AUGUSTUS HEMMENWAY, Appellant,
v.
FISHER, Appellee.

Interrogatories to be propounded to Francis Bacon, Esq., of Boston, a witness to be produced, sworn and examined in behalf of the appellant, in the above entitled cause.

First. What is your age, place of residence, and occupation?

Second. Did you, on Sunday, January 1st, 1854, apply to Mr. Tobey, one of the owners of the Steamer City of Boston, relative to employing the said steamer to proceed to the Ship Independence, then at anchor off Race Point? If yea, where did you first see him? Please state what was said on that occasion.

Third. Did you shortly afterwards, and if so, where, have any further conversation with said Tobey, in the presence of Mr. Hemmenway and Captain Pearson, in relation to employing said steamer? If yea, state all that was said by either, and in the order in which it was said, as nearly as you can state it.

Fourth. Whether or not was anything, and if anything, what, said by either party, in reference to any claims which might be made by owners of goods on board the steamer, for non-delivery of goods early on Monday morning?

Fifth. Whether or not was anything, and if anything, what, said by either party, in reference to insuring the said steamer and the cargo on board, while in your service?

Sixth. Whether or not was anything said by Mr. Hemmenway to Mr. Tobey, relative to the Steamer Forbes? If yea, state all that was said, and in what connection, and in reference to what subject was it said?

Seventh. Whether or not, did Mr. Tobey ask Mr. Hemmenway for a letter to any person, and if so, to what person, and did he, Tobey, give any, and if any, what reason for so asking?

Eighth. Are you a stockholder in the Boylston Fire and Marine Insurance Company, and a member of the China Mutual Insurance Company, and were said companies insurers of said Independence, or her cargo, and how much had each insured?

Ninth. Whether or not have you heretofore received, and do you now hold indemnity from either or both said companies, to cover any payment, loss, or expense, to which you may be subjected, in consequence of such insurance and of this suit?

Tenth. Can you swear whether such indemnity under all circumstances, is more or less than sufficient to cover any possible loss, payment, or expense, to which you may be so subject?

The appellees object to the taking of the deposition of the said witness, Francis Bacon, on the ground that he is an interested witness, and that his testimony would therefore be incompetent, and the said appellees propose the following cross-interrogatories to said witness, *de bene esse*, without waiving their objection to the competency of said witness.

First. Have you heretofore given a deposition in this case, and how long since?

Second. Will you look at the copy of your deposition now exhibited to you, and state if you have seen and read said deposition since it was given, and if not, will you now examine it, and state if this is a true copy of the deposition so given by you?

Third. If, in answer to the Ninth Direct Interrogatory, you say you have heretofore received, and now hold any indemnity from any person or corporation, state minutely of what it consists, whether it is in writing, or evidenced by writing, and produce and annex the originals or copies of all writing constituting such security, or in any way connected therewith?

Fourth. State whether such security, or indemnity, or any or what part of it, was given or taken with any and what agreement, understanding, or expectation that the same should be relinquished or given up, or discharged in any way, after, and how soon after, the taking of this deposition?

Fifth. If, in answer to the Eighth Direct Interrogatory, you shall say you have disposed of your stock in said companies or either of them, state to whom, and for what purpose, and have you any and what agreement, promise, or expectation of receiving the same back again after this deposition shall have been taken, or at any time and when?

S. BARTLETT,
D. THAXTER,
Attorneys for Appellees.

Oct. 17th, A. D. 1854. And now the said Francis Bacon, having been by me first carefully examined, and cautioned and sworn to testify the whole truth, do depose and say, in answer to interrogatories propounded by William Dehon, Esq., proctor of the respondents, as follows:

Interrogatory First. What is your age, residence, and occupation?

Answer to Interrogatory First. My age is forty-nine years; I reside in Boston, and am President of the China Insurance Company.

Interrogatory Second. Did you have any conversation with Mr. Tobey, in the presence of Mr. Hemmenway and Captain Pearson, relative to the employment of the Steamer "City of Boston," on the 1st of January last, to proceed to the "Independence," at anchor off Race Point? If yea, please state what was said on that occasion.

Answer to Interrogatory Second. I had a conversation with Mr. Tobey, in the presence of Mr. Hemmenway and Captain Pearson. I asked Mr. Tobey if the Steamer "City of Boston" could go down and tow up the Ship "Independence," and what would be the price for doing it. He said he could not name a price, as he did not know what service he would have to perform. I afterwards made a proposition to him or we agreed (Mr. Tobey and myself), in the presence of Mr. Hemmenway and Mr. Pearson, that the steamer should go down for the "Independence," and on the return of the steamer Mr. Tobey should render a bill, which, if not satisfactory, we should refer to disinterested parties to say how much we should pay for the service performed; also a distinct agreement that those interested in the vessel and cargo of the Ship "Independence," should insure the cargo of the Steamer "City of Boston" while performing this service. I agreed for the parties interested. Mr. Tobey assented to it. He stated in the first place, that the ship was insured with the privilege in the policies to assist vessels in distress, and that there was likewise a similar clause in the bills of lading of the cargo of the City of Boston.

In consulting with Mr. Tobey, Mr. Tobey said, and I said likewise, that the policy on the vessel would cover the risk of going out in the vessel again, and we both stated that the cargo having been brought into a place of safety, the clause in the bill of lading might not cover the risking it on this trip. I said that I, for the China Company and the parties interested, will insure the cargo. Mr. Tobey then said, "Very well, I agree that the steamer shall go." Mr. Tobey asked for a letter to the captain of the Ship Independence from Mr. Hemmenway to give to Captain Baker, who was going down as our agent in the ship. The conversation about the insurance was previous to the agreement that the steamer should go.

Interrogatory Third. Was anything said by Mr. Tobey in regard to any claim which might be made for non-delivery of cargo early on Monday?

Answer to Interrogatory Third. Yes, that was a part that I omitted. He said there might be some claim from the consignees of the cargo for non-delivery in good season on Monday, and I agreed to be responsible for any claim they might make upon him, or upon the agents of the vessel.

And in answer to cross-interrogatories put de bene esse, not waiving the objection to the deponent on the ground of his interest, propounded by S. Bartlett, Esq., counsel for the libellant, the said deponent further saith:

First Cross-Interrogatory. Did you call Mr. Tobey from church in the first instance, to obtain the use of the City of Boston on that day?

Answer to First Cross-Interrogatory. I waited in the vestibule of the church till he came, thinking that I could not get to his house before he had left for church.

Second Cross-Interrogatory. Was it snowing at the time, and how long before that had you heard of the disaster to the ship?

Answer to Second Cross-Interrogatory. It was snowing at the time—a wet snow. I had then heard of the disaster an hour?

Third Cross-Interrogatory. Had you during that hour applied for assistance in other quarters, and what?

Answer to Third Cross-Interrogatory. I had not.

Fourth Cross-Interrogatory. Had any one else, to your knowledge?

Answer to Fourth Cross-Interrogatory. No one, to my knowledge.

Fifth Cross-Interrogatory. Did Mr. Hemmenway or Mr. Pearson apply to the eastern steamers, as stated to you by them, or do you know?

Answer to Fifth Cross-Interrogatory. I do not know that they did, and they did not state to me that they did.

Sixth Cross-Interrogatory. Will you revise the facts in your mind, and state whether you did not say to Mr. Tobey that application had been made for the eastern steamers, or for any other.

Answer to Sixth Cross-Interrogatory. I did not state to Mr. Tobey that application had been made for any steamer. In walking down from the church to the reading-room, with Mr. Tobey, I told him that Capt. Pearson and Mr. Hemmenway had gone to the "City of Boston," to inquire of Capt. Fisher about the Ship Independence, and that they were going to apply for the steamer; but we found them at the Steamer "City of Boston," and they had not made an application for any other steamer. Mr. Tobey stopped at the reading-room to examine the freight list. In the conversation about the insurance at the T wharf, I asked Mr. Tobey in reference to the value of the cargo; he stated that about $10,000 worth of flour was the largest article, but he couldn't state the value from running his eye over the freight list, and I agreed to insure it, as before stated, for the parties interested, whatever the value might be.

Seventh Cross-Interrogatory. Was all that you have stated in your direct examination in reference to an agreement with Mr. Tobey, the result of a single interview on the T, or was part of it on the way there?

Answer to Seventh Cross-Interrogatory. We separated, after the first part of the conversation on the wharf, went out of the hearing of Mr. Tobey, and consulted with Mr. Hemmenway, Pearson, and others, and then returned to Mr. Tobey and made the proposition.

Eighth Cross-Interrogatory. Will you state word for word all that passed between you and Mr. Tobey, after the separation and your return?

Answer to Eighth Cross-Interrogatory. I stated to Mr. Tobey that we should like to have the boat go down for the Independence. If he would send in a bill on his return for the service performed, and we thought the sum too large, we would leave it to disinterested parties to say what amount should be paid, we to insure the cargo of

the "City of Boston;" and I would also pay any claim that the consignees of the cargo should have for the non-delivery of their goods early Monday morning. He answered, "Well, I agree to it;" and asked for a letter to Capt. Choate from Mr. Hemmenway, the owner of the Independence, saying, that as Capt. Choate had once refused to take the assistance of the steamer, he might do it in this case without orders.

Ninth Cross-Interrogatory. Before this, had not Mr. Tobey, in terms, distinctly told you that he could make no bargain with you as to compensation for the service, as the character and result of the service he could not know?

Answer to Ninth Cross-Interrogatory. I can only repeat what I said previously, that Mr. Tobey said he could not name a price, as he did not know what service the steamer would have to perform.

Tenth Cross-Interrogatory. Will you state how, if at all, your pecuniary interest may be affected by the result of this case?

Answer to Tenth Cross-Interrogatory. I am a member of the China Insurance Company, and was at the time of the service; and I am a stockholder in the Boylston Insurance Company, both of which offices insure on the ship, and the China about $5000 on the cargo.

Eleventh Cross-Interrogatory. In the concluding part of your answer to the Third Direct Interrogatory, did you mean to say that you made your personal promise, or that you did it acting as before stated?

Answer to Eleventh Cross-Interrogatory. I mean in all cases where I have stated that I agreed for the parties interested.

Twelfth Cross-Interrogatory. Will you produce and annex a copy of the By-laws of the China Mutual Company?

Answer to Twelfth Cross-Interrogatory. I will.

Direct Examination resumed.

First Direct Interrogatory resumed. In the course of your examination you undertook to state something regarding the usage of Presidents to act in such cases for the parties in interest, and were stopped. Please state what you know in that respect?

(The proctor for the libellant objects to this interrogatory.)

Answer to First Direct Interrogatory resumed. It is a custom for any one or more of the Presidents of the Insurance Offices here and New York to manage such matters for the benefit of all concerned. We consider ourselves bound in honor to fulfil contracts made in this way, by any of our number.

Cross Examination resumed, de bene esse.

First Cross Cross-Interrogatory resumed. Did you ever make a contract in behalf of others before, or attempt to do so, to insure a vessel and cargo under circumstances like those of the "City of Boston?" If so, state the instances.

Answer to Cross Cross-Interrogatory. I have in many instances made contracts, but I do not recollect one at this time, where there was a cargo to be insured. [I can recall an instance where I became responsible for fifty thousand dollars for the New York Companies without any consultation with them.]

The proctor for libellant objects to the clause in brackets as irresponsive to the question.

(Signed) FRANCIS BACON.

The deposition of Francis Bacon, a witness examined on behalf of said appellant, upon the interrogatory and cross-interrogatories attached to the commission hereto annexed.

In answer to the first interrogatory the said witness saith: I have given two depositions in said cause. The paper annexed purports to be a copy of an answer made by me in my first deposition. There was an alteration made by the magistrate in my said answer in the third line, as appears by said paper annexed to the interrogatory which I am answering; when the magistrate read over to me that deposition before I signed it, I noticed that he had put a period after the word "Independence," in the third line of my said answer, and had commenced another sentence with the word "If" which was not as I testified. I then requested him to make a comma after the word "Independence," and to change the large I in "if," to a small i, so as to make it read as one sentence, as I had stated it in giving the deposition. The magistrate then made the alteration requested, as appears by said annexed paper which I have compared with my original deposition on file in said cause. This alteration does not appear in the deposition, as printed for the United States Supreme Court at Washington; other alterations were also made in the answer, which do appear correctly printed in said printed depositions."

To the first cross-interrogatory, the said witness saith: "My pecuniary interest will not be at all affected. I have more than ample indemnity for any possible loss that can result to me from this suit. I do not own any stock in any insurance company having insurance on the ship Independence or her cargo, at the time mentioned in the cross-interrogatory which I am answering, nor am I in any way interested in any such office, otherwise than as stated in my second deposition in said cause."

To the second cross-interrogatory, the said witness saith: "My pecuniary interests or relations to any of said insurance companies have not been changed, nor have any steps been taken in relation thereto, since my last or second deposition, except that the stock in the Boylston Fire and Marine Insurance Company, which I formerly sold to Daniel C. Bacon, has been sold by his administrator to Daniel G. Bacon; and there is no agreement or understanding whatever with said Daniel G., that he will sell or transfer the same to me; but I have no doubt that he would do so, if I should request it at any time."

FRANCIS BACON.

UNITED STATES OF AMERICA,
Massachusetts district, ss:

On the twenty-ninth day of December, anno Domini eighteen hundred and fifty-six, by me appointed for that purpose, I, the subscriber, caused Francis Bacon, named in the commission hereunto annexed, to be brought before me at Boston, in said district; and the said witness having been first duly sworn by me to testify the truth, the whole truth, and nothing but the truth, relating to the cause in said commission

mentioned, I did then and there carefully examine him, while present before me, on oath, touching the matters set forth in the interrogatory and cross-interrogatories to said commission annexed; and having taken the examination as aforesaid, I did reduce the same then and there to writing, and did cause the same to be subscribed by the said witness in my presence, and the same is by me hereto annexed. And I do certify, that neither party to said cause was present, either himself, or by any attorney or agent, at the taking of said deposition; nor did in anywise communicate with said deponent whilst giving his said deposition; and that I took said deposition in a place separate and apart from all other persons; and that no person was present thereat, except said deponent and myself; and further, that I did put the aforesaid interrogatory and cross-interrogatories to said deponent in their order, and did take the answer of said deponent to each thereof, severally, fully, and clearly; and that I did, in all other respects, conform to and observe the said commission, and the directions therein contained, in taking said deposition.

WILLIAM S. DEXTER,
Commissioner named in said commission.

Deponent's fees - - - - - - - - -	$1 50
Magistrate's " - - - - - - - - -	$5 00

UNITED STATES OF AMERICA.

[L. S.] The Circuit Court of the United States within and for the Massachusetts district.

MASSACHUSETTS DISTRICT, *ss*:

To William S. Dexter, esq're:

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower you to take the answers [to the interrogatories hereunto annexed] of Francis Bacon, a witness to be examined on behalf of the appellant, and to be used in a certain cause now pending in the Supreme Court of the U. S., wherein Augustus Hemmenway is appl., versus Wm. B. Fisher, libt., and to this end, at certain days to be by you appointed for that purpose, to cause said witnesses, as aforesaid, to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your presence. And the same, so taken and subscribed, to return, together with this commission, and your doings herein enclosed, sealed, and directed to the justices of the Supreme Court of the United States, holden at Washington, as soon as the same may be executed.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Boston, this twenty-third

day of December, in the year of our Lord one thousand eight hundred and fifty-six.

H. W. FULLER, *Clerk.*

N. B.—You shall not, except by consent of the parties in writing, permit either party to attend at the taking of the deposition, either himself, or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponent whilst giving his deposition in answer to the interrogatories annexed to this commission. And you shall take such deposition in a place separate and apart from all other persons, and permit no person to be present during such examination, except the deponent and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk, to assist you in reducing the deposition to writing. And you shall put the several interrogatories and cross-interrogatories to the deponent in their order, and take the answer of the deponent to each, fully and clearly. Depositions to be taken on paper of like size with this commission.

Issued by special order of the court.

Attest: H. W. FULLER, *Clerk.*

UNITED STATES CIRCUIT COURT,
First circuit, district of Massachusetts.

AUGUSTUS HEMMENWAY, app't,
vs.
WM. B. FISHER, lib't.

Interrogatories to be propounded to Francis Bacon, in behalf of the appellant, in said cause now depending in the Supreme Court of the United States, whose deposition is to be used therein.

1st. Whether or not have you given any depositions in said cause; if yea, be pleased to examine the paper annexed, and state whether you know anything of any alterations made in your answer to the eighth interrogatory in behalf of the libellant, and how they came to be made?

The libellants object to the taking of the deposition of said Bacon, at this stage of the cause, and also on the ground that the witness is an interested witness; and they also object to the said interrogatory as incompetent, and propound the following cross-interrogatories to said Bacon, de bene esse, and without waiving such objections.

1st. Will you state how, if at all, your pecuniary interest may be affected by the result of this case? Do you own, or are you in any and what way interested, in any stock of any insurance office; and are you in any way interested in any insurance office having insured on the ship or cargo of the Independence, at the time the Steamer "City of Boston" performed the service out of which this case has grown?

2nd. Have your pecuniary interests or relations to any of said insurance companies been changed, or any step taken in relation thereto since your last or second deposition?

S. BARTLETT,
For libellants.